

**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)

To: The Commission

REPLY COMMENTS OF THE BLOOSTON RURAL CARRIERS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP (“Blooston”), on behalf of its clients that are rural wireless service providers (the “Blooston Rural Carriers”), respectfully submits the following reply comments to the FCC’s *Notice of Proposed Rulemaking and Order on Reconsideration* in the above-captioned docket, with proposed rules for the auction of Advanced Wireless Services (“AWS”) licenses in the 1695-1710 MHz, 1755-1780 MHz, 2020-2025 MHz, and 2155-2180 MHz bands, referred to collectively as “AWS-3.”¹ The FCC has indicated that it plans to commence an auction of AWS-3 band licenses as early as September 2014 in order to meet a statutory deadline to grant initial licenses for the AWS-3 bands by February 2015.²

In brief, the Blooston Rural Carriers hereby note for the record their strong support for the availability of Cellular Market Area (or “CMA”) licensing in the AWS-3 bands. A significant number of commenters in this proceeding agree that CMA licensing is necessary to create meaningful opportunities for small and independent service providers to compete in an

¹ See Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185, Notice of Proposed Rulemaking and Order on Reconsideration, FCC 13-102 (rel. July 23, 2013) (“AWS-3 NPRM”).

² AWS-3 NPRM at ¶ 13.

AWS-3 auction.³ The Commission should listen to this diverse chorus of small, mid-tier and even nationwide service providers, representing a significant number of potential auction participants, and rethink its initial proposal to use Economic Areas (or EAs) as the basis for licensing the AWS-3 bands.⁴ The Commission is under a statutory obligation to promote economic opportunity and competition in the provision of wireless services by ensuring that auctions are used to disseminate licenses among a wide variety of applicants, including small businesses and rural telephone companies, and to employ service area designations that promote economic opportunity to these entities as well as an equitable distribution of licenses and services among geographic areas.⁵ Moreover, ample evidence in the record demonstrates that EA licensing is impractical for carriers that have chosen to serve smaller and rural communities, and who do not have sufficient resources to bid for EAs that include larger urban and metropolitan areas. EAs virtually never match up with the incumbent service areas of smaller rural telephone carriers, and CMA licensing is far more efficient in this regard.

The Commission should also adopt auction and service rules for the AWS-3 bands that maximize the potential for competition by companies of all sizes. In this regard, the Commission should offer tiered (and cumulative) bidding credits for bona fide small businesses, very small businesses, and rural telephone companies; it should adopt reasonable license performance requirements that recognize the need to accommodate incumbent federal

³ See, e.g., Comments of Competitive Carriers Association (*CCA Comments*) at pp. 7-9; Comments of The Rural Wireless Association, Inc. f/k/a Rural Telecommunications Group, Inc. (*RWA Comments*) at pp. 3-6; Comments of Public Service Wireless Services, Inc. (*Public Service Comments*) at pp. 1-3; Ex Parte Comments of Texas 10, LLC d/b/a Cellular One and Central Louisiana Cellular, LLC d/b/a Cellular One filed October 17, 2013 (*Cellular One Comments*) at pp. 1-3; Ex Parte Comments of Carolina West Wireless, Inc. filed October 17, 2013 (*Carolina West Comments*) at pp. 1-3.

⁴ AWS-3 NPRM at ¶ 51.

⁵ See 47 U.S.C. 309(j)(3)(B) [Design of systems of competitive bidding] and 47 U.S.C. 309(j)(4) [Contents of regulations].

operations; and it should ensure that nationwide service providers do not have an incentive to create narrowly tailored band classes that exclusively favor their own interests and prejudice smaller carriers. In support of these reply comments, the following is shown:

Statement of Interest

The Blooston Rural Carriers are a diverse group of Tier III Commercial Mobile Radio Service (“CMRS”) service providers that are dedicated to providing high-quality, advanced wireless services in the smaller communities and sparsely populated expanses of rural America. Most are subsidiaries or affiliates of privately-held rural telephone companies or community-owned rural telephone cooperatives that are eligible small businesses under the Commission’s Rules, and all are equally committed to meeting the wireless service needs of their customers. In this regard, the Blooston Rural Carriers would like to have the opportunity to participate in future AWS-3 auctions; however, these carriers know that they would be foreclosed from any meaningful opportunity to obtain initial AWS-3 licenses if they are assigned on the basis of EAs.

I. A Significant and Diverse Group of Commenters Support CMA Licensing for the AWS-3 Bands

The record in the AWS-3 proceeding shows that a significant and diverse group of commenters support the use of smaller geographic areas, namely CMAs, as the basis for licensing of the AWS-3 bands.⁶ Comments of Public Service Wireless, Cellular One and Carolina West demonstrate how EAs do not match up well with the incumbent service areas of smaller companies, and explain that small carriers typically lack the financial wherewithal to bid

⁶ Those in favor of CMA licensing for the AWS-3 bands include small carriers filing individual comments, RWA (a trade association whose members each serve less than 100,000 subscribers), and the diverse membership of CCA, which includes over 100 competitive carriers ranging from small, rural providers serving fewer than 5,000 customers to Tier II (regional) and Tier I (nationwide) carriers serving many millions of customers.

on license areas that encompass major markets where they do not operate.⁷ The Blooston Rural Carriers agree with these showings, and also add that EA licensing, combined with population-based performance requirements, will likely lead to warehousing of spectrum in rural areas by carriers that can afford to bid for larger service areas. In contrast, CMA licensing will ensure that bidders that are focused on providing service to rural areas will have the ability to bid for spectrum that meets their needs, and companies that are focused primarily on serving urban and metropolitan customers will have the ability to obtain the spectrum resources they need. In both cases, the tailored service area size will help to ensure that valuable spectrum resources will put to use in an efficient manner.

In previous auctions, CMA licensing has proven to be a successful model for licensing the 700 MHz and AWS-1 bands, among others, and FCC Auctions 73 and 66 were successful in encouraging small and rural carrier participation. As a result, many rural carriers were able to obtain 700 MHz and AWS-1 licenses for their rural areas and many are hard at work constructing facilities to extend wireless broadband services to smaller communities and towns. EA licensing for the AWS-3 bands would all but foreclose these opportunities for a large segment of the wireless industry that is responsible for a significant amount of competition and innovation.

Finally, the Blooston Rural Carriers further agree with the CCA Comments that CMA licensing is likely to increase overall auction revenue. As CCA notes, “nearly 100 smaller or rural carriers participated in [Auction 73], 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

⁷ Public Service Comments at p. 2; Cellular One Comments at p. 2; Carolina West Comments at p. 2.

billion to win – driving an additional \$300 million in revenue that most likely wouldn't have materialized had these carriers not participated in increased bid amounts.”⁸ Availability of smaller, targeted license areas will ensure that a much larger group of companies and individual entrepreneurs will be able to participate in the AWS-3 auction, and ensure that competitive bidding is robust. Rural spectrum will be allocated to those companies that value it the most, rather than to those who value the significantly more populous metropolitan areas within an EA, and that are able to pay the extremely high license costs which are justified by entirely different economics.

II. The Commission Should Adopt Bidding Credits for Small and Very Small Businesses as Proposed, and Consider Adopting Rural Telephone Company Bid Credits that are Cumulative

The Blooston Rural Carriers support the Commission's proposal to offer bidding credits to small and very small businesses in the AWS-3 auction.⁹ In addition, however, the Commission should consider additional support to incumbent rural carriers in the AWS-3 auction by offering an additional (cumulative) bidding credit of 15% for entities that qualify as a “rural telephone company” or that are a subsidiary or affiliate of a qualified rural telephone company under the Commission's Rules.¹⁰ Availability of the rural telephone company bid credit could be limited to licenses that cover all or a part of the rural telephone company's certificated wireline service area, and this would effectively help companies to compete in their local service territory with large regional and nationwide wireless carriers. The rural telco bidding credit should be available in addition to any other credit for which an applicant may be eligible.

⁸ CCA Comments at p. 8.

⁹ AWS-3 NPRM at ¶ 153.

¹⁰ 47 C.F.R. §51.1; see also 47 USC § 153(44).

In this way, bona fide rural carriers proposing to serve their telco service areas and sparsely populated surrounding areas can effectively compete with carriers bidding in more densely populated areas, in line with the pro-competitive requirements of Section 309(j) of the Act.

III. Population-Based AWS-3 Construction Requirements are Appropriate for CMA License Areas

In order to foster expeditious deployment of service in the AWS-3 band, the FCC has proposed population-based interim and final buildout requirements that required licensees to provide reliable signal coverage and offer service to at least forty (40) percent of the population in each of its license areas within four (4) years, and to at least seventy-five (75) percent of the population in each of its license areas within ten (10) years (*i.e.*, at the end of the initial license term). These benchmarks may be appropriate if smaller CMA license areas are used, but they may result in large amounts of AWS-3 spectrum in rural areas remaining unused if the FCC licenses the AWS-3 spectrum on the basis of EAs. Penalties for failure to meet AWS-3 construction requirements should be limited to a forfeiture of unused spectrum at the final construction milestone pursuant to a “keep what you use” rule that allows for a reasonable interference protection zone around constructed facilities. Harsh penalties such as license cancellation are inappropriate because this creates the risk of stranded investment and interruption of service to existing subscribers.

IV. The Commission Should Consider Adopting an AWS-3 Interoperability Requirement

To prevent a similar situation to what hampered prompt deployment of service and competition in the 700 MHz bands, the FCC should adopt technical rules for the AWS-3 bands that require interoperability for portions of the AWS-3 band and AWS-1 band which are

contiguous to one another. This would promote economies of scale for the benefit of all AWS-3 licensees, and it would ensure that nationwide service providers do not have an incentive to create narrowly tailored band classes that exclusively favor their own interests to the detriment of smaller carriers.

Conclusion

Wherefore, the Blooston Rural Carriers urge the Commission to foster opportunities for rural and independent service providers by adopting CMA licensing for the AWS-3 bands and other measures consistent with these comments.

Respectfully submitted,
BLOOSTON RURAL CARRIERS



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The Blooston Rural Carriers

All West Communications, Inc.....	Kamas, UT
BEK Communications Cooperative.....	Steele, ND
Butler-Bremer Communications	Plainfield, IA
East Buchanan Telephone Cooperative	Winthrop, IA
FMTC Wireless, Inc. d/b/a Omnitel	Nora Springs, IA
Golden West Telecommunications	Wall, SD
Jefferson Telephone Company d/b/a Jefferson Telecom.....	Jefferson, IA
Lehigh Valley Cooperative Telephone Ass'n.....	Lehigh, IA
Ligtel Communications, Inc.....	Ligonier, IN
Peñasco Valley Telephone Cooperative, Inc.	Artesia, NM
Ponderosa Telephone Company	O'Neals, CA
Smithville Telephone Company, Inc.	Ellettsville, IN
Star Telephone Company.....	Baton Rouge, LA
Table Top Telephone Company.....	Ajo, AZ
Venture Communications Cooperative, Inc.....	Highmore, SD
Webster-Calhoun Cooperative Telephone Ass'n.....	Gowrie, IA
Winnebago Cooperative Telephone Ass'n	Lake Mills, IA