

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through)	
Incentive Auctions)	
)	
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: Chief, Wireless Telecommunications Bureau

**SUPPLEMENTAL COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby provides its Comments in response to the Public Notice (“*Public Notice*”) adopted by the Wireless Telecommunications Bureau that seeks comment on a proposal submitted by the Competitive Carriers Association (“CCA”) for auctioning 600 MHz spectrum.¹ As an alternative to its preferred position of auctioning licenses according to Cellular Market Areas (“CMAs”), CCA suggests that the Commission auction spectrum in approximately 390 geographic units called Partial Economic Areas (“PEAs”), which are smaller than the 176 Economic Areas (“EAs”) and larger than the 734 CMAs. WISPA agrees with CCA and others that the Commission should auction a portion of the band by CMA, especially in rural markets. For any spectrum that is not auctioned by CMA, WISPA agrees that auctioning spectrum in some markets by PEA is a viable alternative. Regardless of the geographic unit(s) the Commission auctions, the Commission should adopt WISPA’s proposal to extend bidding credits to businesses with annual gross

¹ *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on a Proposal to License the 600 MHz Band Using ‘Partial Economic Areas,’” GN Docket Nos. 12-268 and 13-185, DA 13-2351 (rel. Dec. 11, 2013) (“*Public Notice*”).

revenues of \$3 million or less, consistent with statutory objectives and past spectrum auctions.² Adopting this set of rules will encourage more meaningful participation in the 600 MHz forward auction by small companies, without limiting the ability of any party to bid.

Discussion

I. THE COMMISSION SHOULD AUCTION LICENSES BY CELLULAR MARKET AREA.

The WISPA Comments urged the Commission to auction at least two contiguous paired spectrum blocks (a total of 20 megahertz) according to CMAs.³ WISPA stated that making some spectrum available in smaller geographic areas “will afford smaller, regional operators the opportunity to acquire spectrum that more precisely overlays existing networks, and will encourage greater participation in the auction.”⁴ WISPA also showed that in Auctions 66 and 73, where the Commission auctioned some spectrum by CMA, “designated entities” acquired a higher percentage of spectrum in rural areas.⁵ Including CMAs in the auction also would be consistent with Section 6403(e)(3) of the Spectrum Act, which requires the Commission to “consider assigning licenses that cover geographic areas of a variety of different sizes.”⁶

In addition to WISPA, United States Cellular Corporation (“USCC”)⁷ and the Rural Telecommunications Group (“RTG”)⁸ also urged the Commission to auction the 600 MHz band by CMA. USCC observed that “the use of CMAs would allow more targeted spectrum

² See Comments of WISPA, GN Docket No. 12-268, WT Docket No. 08-166, WT Docket No. 08-167 and ET Docket No. 10-24 (Jan. 25, 2013) (“WISPA Comments”) at 30-33; Reply Comments of WISPA, GN Docket No. 12-268, WT Docket No. 08-166, WT Docket No. 08-167 and ET Docket No. 10-24 (Mar. 12, 2013) at 18-19; Letter from Stephen E. Coran, WISPA counsel, to Marlene H. Dortch, FCC Secretary, Notice of Oral Ex Parte Presentation, GN Docket No. 12-268, WT Docket No. 08-166, WT Docket No. 08-167 and ET Docket No. 10-24 (May 13, 2013), Presentation at 10.

³ See WISPA Comments at 30.

⁴ *Id.*

⁵ See *id.* at 31-32.

⁶ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

⁷ Comments of United States Cellular Corporation, Docket No. 12-268 (Jan. 25, 2013) (“USCC Comments”).

⁸ Comments of the Rural Telecommunications Group, Inc., Docket No. 12-268 (Jan. 25, 2013) (“RTG Comments”).

acquisition and result in greater efficiencies for both large and small applicants, while not discriminating in favor of any single business plan.”⁹ RTG similarly stated that “[l]icensing the 600 MHz band on the basis of smaller license areas would also result in greater auction and market efficiency because it would allow bidders to tailor their auction strategy and spectrum acquisitions to meet a wider variety of business plans.”¹⁰ In the past few months, several other parties, including CCA,¹¹ have joined the call for auctioning 600 MHz spectrum by CMA.¹²

In its November 27, 2013 ex parte letter, CCA reiterated its support for CMA auctions as “the optimal geographic license size for the forward auction to promote competition and the public interest.”¹³ Citing a report it filed with the Commission a week earlier, CCA agreed that “auctioning spectrum in smaller geographic license sizes like CMAs would ‘maximize opportunities for efficient participation by both large and small wireless service providers.’”¹⁴

Echoing the WISPA Comments, CCA added that CMA auctions “would enable smaller and rural

⁹ USCC Comments at 12.

¹⁰ RTG Comments at 3.

¹¹ See, e.g., Letter from Steven K. Berry, President and CEO, CCA, *et al.*, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 and GN Docket No. 13-185 (Oct. 2, 2013).

¹² See Letter from Ron Smith, President, Bluegrass Cellular, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 (July 10, 2013); Letter from Gregory W. Whiteaker, Counsel to Northwest Missouri Cellular Limited Partnership, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 (July 30, 2013); Letter from Patrick D. Riordan, President and CEO, New-Cell, Inc. d/b/a Cellcom, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268, AU Docket No. 13-178 and GN Docket No. 13-185 (Aug. 5, 2013); Letter from Gregory W. Whiteaker, Counsel to RSA 1 Limited Partnership d/b/a Chat Mobility, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 (Aug. 8, 2013); Letter from Gregory W. Whiteaker, Counsel to Sandhill Communications, LLC, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 and GN Docket No. 13-185 (Aug. 21, 2013); Letter from Gregory W. Whiteaker, Counsel to VTel Wireless, Inc., to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 (Sept. 6, 2013); Letter from Gregory W. Whiteaker, Counsel to Atlantic Seawinds Communications, LLC, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 and GN Docket No. 13-185 (Sept. 18, 2013); Letter from Gregory W. Whiteaker, Counsel to Public Service Wireless Services, Inc., to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 and GN Docket No. 13-185 (Sept. 18, 2013); Letter from Slayton Stewart, CEO, Carolina West Wireless, Inc., to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268, AU Docket No. 13-178 and GN Docket No. 13-185 (Oct. 7, 2013); Letter from David A. LaFuria and John Cimko, Counsel to N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless, to Marlene H. Dortch, FCC Secretary, GN Docket No. 12-268 (Dec. 9, 2013).

¹³ Letter from Rebecca Murphy Thompson, CCA General Counsel, to Marlene H. Dortch, FCC Secretary, Ex Parte Presentation, GN Docket No. 12-268 (Nov. 27, 2013).

¹⁴ *Id.* at 1, quoting William Lehr and J. Armand Musey, “Right-Sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction” (“Lehr/Musey Study”), attached to Letter from Steven K. Berry, CCA, to The Hon. Tom Wheeler, FCC Chairman, GN Docket No. 12-268 (Nov. 20, 2013).

carriers to bid on smaller spectrum licenses without being forced to bid on large geographic areas that they cannot efficiently serve (or being foreclosed from bidding altogether), while still allowing larger carriers to aggregate licenses to acquire larger swaths of spectrum, including nationwide spectrum.”¹⁵

The Lehr/Musey Report also pointed out that “smaller areas should increase the ability to allow for market variation in areas where limited amounts of spectrum are procured through the Reverse Auction, while reducing the amount of spectrum lost due to international border coordination with Canada and Mexico or other encumbrances.”¹⁶ In other words, auctioning spectrum in smaller geographic areas would enable the Commission to auction spectrum in constrained markets to more closely correspond to the affected TV stations’ contours rather than auctioning larger areas that would be overinclusive of areas actually required to be protected. This would enable more efficient use of spectrum for both licensed and unlicensed purposes.¹⁷

Without prejudice to its continued support for CMAs, CCA developed a plan showing how EAs could be divided into approximately 390 PEAs to preserve “at least *some* of the benefits of smaller license areas,” though it correctly explained that “PEAs would not promote opportunities for smaller carriers to the same degree as CMAs.”¹⁸ PEAs would respect CMA boundaries to the extent possible and nest within existing EAs.

¹⁵ *Id.*

¹⁶ Lehr/Musey Report at 2.

¹⁷ WISPA has urged the Commission to avoid “over-auctioning” 600 MHz spectrum under the guise of “market variation,” and has asked the Commission to auction different amounts of spectrum where and as necessary to address constrained markets. *See* Comments of WISPA, GN Docket No. 12-268 (June 14, 2013) at 4 (“[t]aken to an extreme, the Commission could unwisely decide to auction all vacant TV band spectrum, leaving no spectrum for unlicensed use even in the most rural of markets”); Reply Comments of WISPA, GN Docket No. 12-268 (June 28, 2013). *See also* Comments of the National Association of Broadcasters, GN Docket No. 12-268 (June 14, 2013) at 11; Comments of Sinclair Broadcast Group, Inc., GN Docket No. 12-268 (June 14, 2013) at 3; Comments of Lima Communications Corporation, *et al.*, GN Docket No. 12-268 (June 14, 2013) at 4.

¹⁸ *Id.* at 2 (emphasis in original). *See also* Letter from C. Sean Spivey, CCA Assistant General Counsel, to Marlene H. Dortch, FCC Secretary, Ex Parte Presentation, GN Docket No. 12-268 (Dec. 23, 2013) (increasing the number of PEAs from 351 to 390).

More recently, in a report commissioned by NTCA – The Rural Association and the Rural Wireless Association, Inc., National Economic Research Associates, Inc. (“NERA”) suggested a sequential forward auctioning process in which auctions for PEAs covering 152 metropolitan areas would first be conducted, followed by a second auction in which 428 Rural Service Areas would be auctioned.¹⁹ The NERA Report identifies four benefits of auctioning smaller geographic areas: (1) promotes participation in the auction by creating opportunities for small bidders to bid on areas that correspond to their geographic requirements, (2) maximizes the role of the market in determining license allocation, (3) promotes statutory objectives, and (4) potentially supports greater variation in the amount of reclaimed spectrum.²⁰

For all of the reasons explained in the record and the analyses presented by WISPA and by both the Lehr/Musey Report and the NERA Report, the Commission should auction some 600 MHz spectrum in contiguous paired blocks by CMA nationwide, or at least in rural areas as the NERA Report recommends. As a complement to this plan, for any spectrum it does not auction by CMA, the Commission should auction according to PEAs that, while larger than CMAs, promote opportunities for small companies to participate in the auction without prohibiting larger bidders from acquiring large spectrum footprints.

II. THE COMMISSION SHOULD MAKE AVAILABLE ALL THREE LEVELS OF “DESIGNATED ENTITY” BIDDING CREDITS.

Section 309(j)(3)(b) of the Communications Act of 1934, as amended (the “Act”), requires the Commission to design and implement competitive bidding procedures that foster a number of public policy objectives, including “promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people

¹⁹ See “Local and Regional Licensing for the US 600 MHz Band (Incentive Auction,” GN Docket Nos. 12-268 and 13-685 (Jan. 7, 2014) (“NERA Report”).

²⁰ See *id.* at 11.

by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants.”²¹ As an additional measure to promote participation in the 600 MHz auction by smaller entities, the Commission should apply all three levels of bidding credits established in Section 1.2110(f)(2)(i)-(iii), as follows:

- a 15 percent bidding credit for “small businesses” with average gross revenues for the preceding three years of \$40 million or less,
- a 25 percent bidding credit for “very small businesses” with average gross revenues for the preceding three years of \$15 million or less, and
- a 35 percent bidding credit for “entrepreneurs” with average gross revenues for the preceding three years of \$3 million or less.

In the *Notice of Proposed Rulemaking*, the Commission proposed to apply its 15 percent and 25 percent bidding credits, but did not specifically propose to apply the 35 percent bidding credit.²²

In determining bidding credit levels for spectrum auctions, the Commission considers, on a service-by-service basis, the “characteristics and capital requirements of the specific service.”²³ In auction procedures adopted subsequent to the *Part 1 Third Report and Order*, the Commission has implemented the 35 percent bidding credit to “provide adequate opportunities for small businesses of varying sizes to participate” in the auction.²⁴ The Commission explained that “although bidding credits do not guarantee the success of small businesses, we believe that they

²¹ 47 U.S.C. § 309(j)(3)(b).

²² See *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12455 (2012).

²³ *Amendment of Part 1 of the Commission’s Rules – Competitive Bidding Procedures*, GN Docket Nos. 97-82, et al., Third Report and Order and Second Further Notice of Proposed Rulemaking, 13 FCC Rcd 374 (1997) (“*Part 1 Third Report and Order*”) at 388.

²⁴ *Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems*, WT Docket Nos. 96-18, et al., Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030 (1999) (“*Paging Auction Order*”) at 10091 (for paging Auction 89). See also *Amendment of the Commission’s Rules Regarding Multiple Address Systems*, WT Docket No. 97-81, Report and Order, 15 FCC Rcd 11956, 12008 (2000) (for Multiple Address System Auction 59); *Amendment of the Commission’s Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19885 (1998) (for AMTS Auction 57).

provide such bidders with an opportunity to successfully compete against larger, well-financed bidders.”²⁵

In adopting the rules for the Lower 700 MHz auctions, the Commission added the 35 percent bidding credit based on the record, after initially proposing only the 15 percent and 25 percent bidding credit tiers. The Commission stated its belief that:

new services that may be deployed in the smaller non-EAG license areas could have different characteristics and capital requirements. . . . Some new services that may be deployed in smaller license areas may have lower capital requirements than for the larger EAG-based licenses. For example, these smaller license areas may be suited to applications with relatively low costs, *such as fixed broadband wireless services* which use only the “white areas” of a heavily-encumbered, smaller license area.²⁶

The Commission thus utilized all three bidding credit tiers “because the capital costs of operational facilities in the . . . band are likely to vary widely.”²⁷ The Commission also noted that its decision was consistent with the objectives of Section 309(j) of the Act.²⁸

The Lower 700 MHz auction rules suggest that the Commission should adopt the same auction model for the 600 MHz auction. Given the proximity of the Lower 700 MHz band to the 600 MHz band, it can be expected that different business models with widely varying capital requirements will similarly emerge. As an example, WISPs may desire the benefits of exclusive spectrum to construct and operate fixed broadband systems. Other bidders, who might otherwise be foreclosed from meaningful participation in the 600 MHz auction, may have other business models that have lower capital requirements. And, of course, the capital requirements for building wireless systems in CMAs, and to a lesser extent PEAs, will be much less than the

²⁵ *Paging Auction Order* at 10091.

²⁶ *Reallocation and Service Rules for the 698-746 MHz spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022, 1088 (2002) (emphasis added).

²⁷ *Id.*, quoting *Amendment of Parts 1, 2, and 101 of the Commission’s Rules to License Fixed Services at 24 GHz*, WT Docket No. 99-327, Report and Order, 15 FCC Rcd 16934, 16967 (2000).

²⁸ *See id.* at 1092-93.

capital requirements for building out EAs. Accordingly, in combination with auctioning small geographic areas, the Commission should allow bidders with \$3 million or less in annual revenues to claim a 35 percent bidding credit to enable greater participation in the auction and to reduce barriers to entry by small companies seeking to serve small geographic areas.

Conclusion

The Commission should auction at least 20 megahertz of the 600 MHz band according to CMAs. For areas and spectrum blocks where the Commission is unwilling to auction according to CMAs, it should auction licenses according to PEAs. In addition, the Commission should make available all three levels of its available bidding credits, including the 35 percent “entrepreneur” credit for bidders with \$3 million or less in average gross revenues. Taken together, these rules will promote greater participation in the auction by smaller companies, confine “market variation” to the smallest geographic areas and accommodate a wide variety of operational characteristics and capital requirements, without adversely affecting the ability of any entity to bid on licenses.

Respectfully submitted,

WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION

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