

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

)	
)	
In the Matter of)	
)	
Expanding the Economic an 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)	

COMMENTS OF KING STREET WIRELESS, L.P.

King Street Wireless, L.P. (“King Street”), by counsel, hereby submits its comments in response to the Wireless Telecommunications Bureau’s (“WTB” or “Bureau”) Public Notice of December 11, 2013¹ regarding the captioned proceeding (the “Public Notice.”) For the reasons set forth below, King Street urges the Commission not to use PEAs, and to continue its long tradition of utilizing CMAs, or to use a combination of both EAs and CMAs.²

I. BACKGROUND

A. King Street’s Experience in Auctions

King Street is a very small business designated entity (“DE”). King Street participated aggressively in Auction No. 73, the last major wireless auction conducted by the Commission. There, King Street acquired 700 MHz licenses in 152 separate markets, and paid the Commission

¹ Public Notice entitled “Wireless Telecommunications Bureau Seeks comment on a Proposal to License the 600 MHz Band Using ‘Partial Economic Areas;’” (WTB rel. December 11, 2013).

² King Street understands that the Commission may be reluctant to use both CMAs and EAs, out of a want to have all license awards in a given market be interchangeable. While King Street believes designing an auction so that all frequency blocks within a given market are interchangeable presents more problems than benefits, that issue is beyond the scope of the instant request for comments. King Street mentions a possible combination of CMAs and EAs only because, while less preferable than all CMAs, it would be far superior than other options before the Commission.

(in full and on time) over \$300 million. Of the 152 licenses obtained, 125 were for Cellular Market Areas (“CMAs”) and 27 were for Economic Areas (“EAs”). Notably, King Street stands virtually alone among Auction No. 73 licensees in that, without the need for any extensions, it successfully complied with the initial construction milestone for each of its 152 licensees.

For all of these reasons, King Street is uniquely qualified to comment on the significance of license area sizes, especially where below 1 GHz spectrum is being auctioned, and particularly with respect to DE licensees.

B. The Bureau’s Public Notice

By the Public Notice, the Bureau sought comment³ regarding the appropriateness of utilizing a not-before used and not formally existing set of license areas, dubbed “Partial Economic Areas,” or “PEAs,” in its upcoming Incentive Auction.⁴ The Bureau also sought comment on the “extent to which the licensing and package bidding concepts discussed herein may or may not affect the design of the incentive auction”.⁵

As explained in the Public Notice, the Commission already has before it proposals to use EAs and to use CMAs. PEAs fall somewhere in between EAs and CMAs, insofar as size is concerned. (There are 176 EAs; 734 CMAs; and 350 PEAs.) Moreover, PEAs involve new boundaries, and license area sizes and shapes not previously existing and never recognized by any independent body. Lastly, the Bureau reported in its Public Notice that the entity that proposed PEAs still favors CMAs over them, and views PEAs as nothing more than a fallback position in the event that the Commission elects not to use CMAs.

³ Comments are due on January 9, 2014, and Reply Comments are due on January 23, 2014. Thus, these comments are timely submitted.

⁴ Public Notice, at 2.

⁵ Id, at 3.

II. DISCUSSION

A. The Commission Must Adopt an Auction Design that Complies with the Commission's Governing Statute

First and foremost, the Commission must comply with the Statute⁶ as it designs all aspects of its Incentive Auction program, including designation of specific markets and market sizes. There are two over-arching mandates that are particularly applicable here. The first, set forth in Section 309(j)(4)(C) of the Act, provides that the Commission shall:

consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services.

47 U.S.C. § 309(j)(4)(C).

The second over-arching mandate is set forth in Section 309(j)(4)(D) of the Act and provides that the Commission shall:

Ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services consistent with the public interest, convenience, and necessity, the purposes of this chapter, and the characteristics of the proposed service.

47 U.S.C. § 309(j)(4)(D). Notably, these are mandates in the truest sense of the word, as Congress carefully prescribed these as things that the Commission “shall” (not “should”, or “may” or “should try to”) do.

Both the record in this proceeding and the Commission's vast experience with auctions demonstrate that (a) the Commission must utilize every available design tool that is available in order to comply with these mandates and (b) smaller markets are a primary means to achieve these mandated ends. Witness Auction No. 73, where nearly 90% of licenses (measured on a value basis as reflected by winning bid amounts) went to only two bidders, thereby leaving a

⁶ The Communications Act of 1934, as amended, 47 U.S.C. § 1 et seq.

paltry 10% to be shared by all other bidders⁷. This concentration level was not radically new or different, but merely continued a disturbing trend of upward concentration of auction awards from other wireless auctions.⁸ More to the point, these auction results demonstrate that the Commission is already perilously close to violating Congressional mandates that are effectively the sine quo non for the Commission receiving and maintaining authority to conduct auctions.

There can be no genuine dispute regarding the fact that use of smaller market sizes, e.g., CMAs, would facilitate Commission compliance with its statutory mandates. Smaller markets, by and large, are less expensive to acquire than larger ones, and therefore are more available to cash-strapped smaller bidders than are larger ones.⁹ Smaller markets are also generally more free from “excess territory,” i.e., territory where smaller carriers have no existing operations or interest. Thus, smaller markets are more affordable to smaller bidders for a second reason: There is less need to expend construction funds on areas of little or no interest.¹⁰

The Commission and commenters have acknowledged the above. See Public Notice, at 1-2. See also various comments in the referenced docket where smaller entities urge use of CMAs and larger carriers seek larger service areas.¹¹ The reason for this phenomenon is not complicated: larger areas mean less competition and more licenses (at less cost) for the largest carriers.¹²

⁷ See Reply Comments of the 700 MHz Block A Good Faith Purchaser’s Alliance, filed April 30, 2010, at 25, in RM No. 11592.

⁸ See results of Auction No. 58, where the top five bidders accounted for nearly 70% of the winnings, and Auction 66, where the top five bidders accounted for nearly 60% of all winnings.

⁹ The Commission has repeatedly recognized that lack of access to capital is primary impediment to successful auction participation by smaller bidders and for women and minority-owned entities.

¹⁰ Recently, N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless (“Viaero”) presented a vivid example of this. Of the nearly 4 million pops in the Denver EA, less than 1 million are within Viaero’s area of interest. Thus, if EAs were applied, Viaero would be forced to incur over \$7 million in unnecessary costs. See Viaero ex parte presentation of December 9, 2013 in this proceeding.

¹¹ There are, of course, other public interest benefits to the use of CMAs. For example, because CMAs include less area that would be of particular interest to winning licensees generally, be they large or small, there will be fewer areas that are either not constructed or not constructed with quality systems.

¹² Any legitimate analysis of Auction No. 73 results must take into consideration that the types of licenses these offered for CMA and EA markets were very different. For EAs, the Block A spectrum there available had a number unique characteristics that made them much less valuable. Because of the lesser value, EAs licenses in Auction 73 sold at considerably lower prices, on a per MHz pop basis, and smaller carriers participated accordingly.

B. Use of PEAs Would Detract from the Legitimacy Associated with Auction

Second only to the need for compliance with governing law, the most critical issue regarding the license market definitions that the Commission employs in its auctions is that they must contribute to (and not detract from) an air of legitimacy that contributes to the overall integrity of the auction process. Whereas, it may be fair game for some parties to advocate for smaller license areas and others to call for larger license areas, such advocacy involves only issues regarding which already-established license market areas should be utilized. That is a far cry from the situation at hand with PEAs, where select would-be auction participants hand-craft license areas to their particular liking, and to their advantage in the auction itself. The former (e.g. CMAs vs EAs) is legitimate advocacy while the latter (use of PEAs) comes far closer to constituting gerrymandering. And that would erode the legitimacy of the entire auction process.¹³

The Commission has long realized the above, and the need to utilize objective market sizes. That is why, from the inception of geographic area-based licensing efforts, the Commission has relied exclusively on existing market definitions. To illustrate: (a) in cellular, MSAs and RSAs (which combine to constitute CMAs) were used; (b) in PCS, Basic Trading Areas (“BTA”s) were applied; and (c) subsequently, either EAs, CMAs on some combination of those were generally utilized.

Simply put, the reasons why the Commission has always used recognized licensing areas are as strong today as they have been over the last thirty years, and there is no reason to change.

C. In Wireless, There Already Exists Multiple Different Market Sizes, and there is No Need to Have License Market Sizes for the Incentive Auction “Nest” with Any Particular Existing Market Size

In the Public Notice, at 2, the Bureau “encourage(d) commenters to address the geographic area licensing issues raised in the NPRM, including the importance of using a licensing scheme that “nests” into EAs. Public Notice, at 2.

¹³ Although not addressed expressly in the Public Notice, another compromise proposal for license market size was recently presented to the Commission. Specifically, on December 6 in this proceeding, NTCA and the RTG advocated a two stage forward auction process. While this proposal does not carry with it the integrity-threatening aspects of the PEA proposal, King Street cannot support this either, due to the complexity that it presents without sufficient accompanying benefit.

In addressing the issue of a need for “nesting” several facts are noteworthy. Most significantly, notwithstanding the purported difficulty that large carriers claim to have in acquiring regional or national footprints, they have been able to accomplish that, time and time again. For example,

- The two largest carriers have largely nationwide 850 MHz systems, and those systems consist of CMAs (all 734 of them);
- One of those carriers has a virtual nationwide Lower Band 700 MHz system that consists of largely of CMA licensed systems;
- A third nationwide carrier has a nationwide footprint consisting of combined BTAs;
- Only several years ago, the Commission recognized that a nationwide carrier had pieced together a virtual nationwide system utilizing 900 MHz site-based licenses in many cases, such that the Commission agreed to exchange those licenses for an absolute nationwide system operating at 1900 MHz;
- National carriers have repeatedly recognized that they can serve their customers best by combining use of different frequency bands. This is demonstrated by their willingness to pay considerable sums for less-than-nationwide coverage and by their assertions that some bands are better for one type of coverage, and others for different types of coverage in different areas.

All of this demonstrates both that (a) “nesting” can exist regardless of what market designation is used in a particular auction and that (b) oftentimes, nationwide systems consists of a combination of multiple different frequencies and market sizes.

D. Smaller Market Areas Provide Additional Public Interest Benefits

1. Auction Experience Demonstrates that Use of Smaller License Areas Increases Competition and Revenues

Auction No. 73 is the highest revenue-generating auction conducted to date. Nearly \$20 Billion was raised. It included primarily CMAs for Block B licenses and EAs for the larger Block A licenses. There were also Regional Economic Area Groups (“REAGs”) for the still larger Upper Block C licenses. Of note is the fact that CMAs (the smallest market definition) raised the most revenue on a MHz/pop basis; EAs (a larger market definition used)

raised less revenue on a MHz/pop basis; and REAGs (the largest market designation) also raised far less than CMAs on a MHz/pop basis.¹⁴

2. Smaller Markets Result in Better Coverage, and Less Uncovered Areas

Basic economic theory provides that, when markets are smaller, there is less unwanted or unneeded area that must be both purchased at auction and then built out.¹⁵ No public interest is served by requiring licensees to bid for, then build out, territory that is of no interest to them, other than because it is paired with territory in which they do have an interest. In fact, such requirements dis-serve the public interest by causing less money to be devoted to genuine areas of interest. And ultimately, it is the subscriber that pays for such unnecessary obligations.

3. Smaller Markets Sizes Will Increase the Amount of Spectrum Available for Auction

One of the many complicating factors associated with the Incentive Auction is the need to have broadcasters voluntarily make available spectrum in the “reverse” phase of the auction, which spectrum can then be made available for wireless use. Broadcasters are not licensed for neatly defined geographic areas. As a result smaller markets present an advantage over larger ones in that they further the Commission’s goal of “promoting efficiency in converting broadcast television licenses to flexible use mobile channels” because of the increased likelihood that, with smaller license areas, a given broadcaster’s spectrum will completely cover the license area and thereby permit wireless licensing.¹⁶

¹⁴ See Public Notice DA 08-595 (March 20, 2008), Report No. AUC-08-73-1. The auction also included one even-larger market designation: the nationwide license for Block D. Notably, the D Block nationwide license received only one bid, and it was so low that it failed to meet even the Commission’s minimum threshold. Thus, it was never sold at auction.

¹⁵ See e.g. the Comments of Leap Wireless International, Inc. and Cricket Communications, Inc. (“Leap”) where Leap pointed out that “[a]uctioning spectrum in blocks that are too large in size for small, midsize, and regional carriers to use effectively would disadvantage those carriers relative to their larger brethren, and diminish their ability and incentive to participate[.]” and that, “[c]onversely, using smaller geographic units would enable smaller carriers to participate and tailor spectrum acquisition to their service territories, while also allowing national carriers who seek to acquire larger amounts of spectrum to bid on multiple blocks.” Leap Comments, GN Docket No. 12-268 (filed Jan. 25, 2013) (“Leap Comments”) at 4.

¹⁶ Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking in Docket No. 12-268 (“NPRM”), 27 FCC Rd 12357, at 12403 (2012) (addressing alignment of spectrum block size with broadcaster bandwidth.)

4. There are No Substantial Reasons Not to Use CMAs

The numerous reasons why CMAs should be used as presented above. A lone basic argument to the contrary appeared in the NPRM, at 11411. There the Commission noted that use of CMAs:

“may raise implementation risks for the auction design contemplated in this proceeding. Moreover, more licenses could complicate potential bidders’ efforts to plan for, and participate in, the auction for such licenses, as well as subsequent roll out of service.”

Such concerns are no doubt well intended. Yet, they are not well founded or supported. Specifically, no explanation as to why use of CMAs would create any “implementation risks” or planning problems was provided. Nor did the NPRM include any discussion of why such “implementation risks” are greater than the many risks that otherwise exists with the auction.¹⁷

E. Inclusion of Package Bidding in the Incentive Auction Would Be Contrary to the Public Interest

Package Bidding is generally understood to be an auction design component whereby, if one bidder bids more for an entire group of licenses than any others have bid for those same licenses on an individual basis, the high bidder will be awarded the entire “package” of licenses. The primary argument in support of Package Bidding is that it permits bidders to know that they will be able to obtain licenses for an entire group of markets. The primary arguments against Package Bidding are that it is effectively an opportunity that is available only for the largest carriers; it greatly complicates the auction process and it is not really necessary. In essence, this is a large carrier versus small bidder issue, and the comments submitted to date in this proceeding reflect it.

King Street submits that, if the Commission genuinely wants to comply with the Section 309(j)(4)(C) and (D) mandates discussed above, there is no place for Package Bidding

¹⁷ Some have argued that use of larger markets is important because it would minimize transaction costs. Yet, such costs are already minimized given spectrum prices.

in the Incentive Auction. Most certainly there is no need for it, as large carriers do quite well in cobbling together larger service areas, even in the absence of Package Bidding. Lastly, given the Commission's concern about not overly complicating the auction process (See Section II. D. 4 above), Package Bidding should not be available.

III. CONCLUSION

King Street is a DE that has demonstrated its ability to succeed in a wireless auction, and then to build out timely its license winnings. Based upon that experience, and other information presented herein, King Street knows the importance of using the proper license market area size in auctions.

The proper, and the only proper, size for the Incentive Auction is CMAs. Their use is necessary for the Commission to comply with Congressional mandates associated with the Commission's authority to conduct auctions (See Section II. A above), and to maintain the integrity of the auction process itself (See Section II. B above). Use of CMAs would also enhance competition in the auction, likely increase revenue and result in overall better service to the public.

For all of these reasons, King Street urges the Commission to utilize CMAs in its Incentive Auction.

Respectfully submitted,

KING STREET WIRELESS, L.P.

/s/ Thomas Gutierrez
Counsel for King Street Wireless, L.P.
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102

January 9, 2014