

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

In the Matter of)	
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	
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
)	

To: The Wireless Telecommunications Bureau

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 or that wish to provide wireless services (the “Blooston Rural Carriers”), respectfully submits the following reply comments in response to the Wireless Telecommunications Bureau’s (“Bureau”) *Public Notice* in the above-captioned proceedings.¹

In review of the comments and recent ex parte filings in these proceedings, it is clear that an approach to licensing of the 600 MHz band that allows for a mix of both Economic Area (“EA”) and Cellular Market Area (“CMA”) licenses, and one that limits the ability to submit bids for large “packages” of licenses, is the best way for the FCC to maximize participation in the forward licensing of the 600 MHz band while at the same time meeting its statutory obligations under 47 U.S.C. 309(j) to ensure that auctions are used to disseminate licenses among a wide variety of applicants, including small businesses and rural telephone companies, and promoting

¹ 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, *Public Notice*, DA 13-2351 (*rel.* Dec. 11, 2013).

economic opportunity by ensuring an equitable distribution of licenses and services among geographic areas.² To the extent that the Commission feels EA licensing offers benefits, it can use a hybrid approach by splitting the reclaimed 600 MHz into EA- and CMA-sized blocks, as it has done in other auctions.

I. The Record Supports Using Smaller Geographic License Sizes, and CMAs Are the First Choice of Rural and Regional Operators

A significant majority of commenters, outside of the nation's largest carriers, support forward licensing of the 600 MHz band on the basis of geographic areas that are smaller than the EAs that the Wireless Telecommunications Bureau initially proposed.³ There is some disagreement as to how much smaller individual licenses need to be to provide small and regional operators a substantive opportunity to win licenses, but the record shows that Partial Economic Areas (or "PEAs") are not small enough for many small and rural carriers that are potential bidders in a forward auction of 600 MHz licenses, and that CMA licensing is the first choice of every commenter *except for* the nation's largest carriers. CMA licensing is familiar to the industry, and its use will inspire confidence in Tier II and Tier III carriers. This will help to maximize auction participation and boost proceeds as it has in previous FCC auctions.⁴

Moreover, comments as well as detailed economic studies have shown that EA licensing is not

² 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].

³ See, e.g., Comments of the Rural Wireless Association and NTCA – The Rural Broadband Association (filed January 9, 2014) ("*RWA/NTCA Comments*"); Comments of The Blooston Rural Carriers (filed January 9, 2014) ("*Blooston Comments*"); Supplemental Comments of Competitive Carriers Association (filed January 9, 2014) ("*CCA Supplemental Comments*"); Comments of United States Cellular Corporation (filed January 9, 2014) ("*US Cellular Comments*"); Comments of King Street Wireless, L.P. (filed January 9, 2014) ("*King Street Comments*"); Comments of the Carolina Companies (filed January 9, 2014) ("*Carolina Comments*"); Comments of Peoples Telephone Cooperative, Inc. (filed January 9, 2014) ("*Peoples Comments*"); Comments of Public Service Wireless Services, Inc. (filed January 9, 2014) ("*Public Service Comments*"); Comments of the Wireless Internet Service Providers Association (filed January 9, 2014) ("*WISPA Comments*").

⁴ See, e.g., *US Cellular Comments* at pp. 25-27, *King Street Comments* at pp. 6-7.

sufficiently granular to meet the spectrum needs of rural and regional carriers.⁵ CMAs match most closely with the service areas of incumbent operators, resulting in the efficient allocation of a valuable and limited resource. For these reasons, the Blooston Rural Carriers continue to urge the Wireless Bureau to develop a 600 MHz licensing model that utilizes CMAs or a combination of EAs and CMAs.

a. Availability of CMA Licenses is Necessary for the Commission to meet its Statutory Obligations

Numerous commenters in this proceeding have recognized the overriding importance of the FCC's statutory obligations under Section 309(j) of the Communications Act obligations to adopt auction and service rules and license sizes and bandwidth assignments that, among others, (1) ensure the timely deployment of new services to people residing in rural areas; (2) promote economic opportunity and competition, ensure new technologies are readily available to the public by avoiding the excessive concentration of licenses and disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies; (3) prevent stockpiling or warehousing of spectrum; and (4) promote an equitable distribution of licenses among different geographic areas and promote economic opportunities for small businesses and rural carriers.⁶ The Blooston Rural Carriers agree with RWA/NTCA that the Commission failed to sufficiently consider Section 309(j) and the impact on small businesses and rural carriers when it tentatively concluded that EAs were an appropriate middle ground,⁷ and join King Street in emphasizing that these requirements "are mandates in the truest sense of the word, as Congress

⁵ *RWA/NTCA Comments* at pp. 7-9 (citing the findings of the Lehr/Musey Study and NERA Report, and specific examples of rural carriers that would be precluded from bidding in a 600 MHz auction if EA license areas were used).

⁶ *See, e.g., RWA/NTCA Comments* at pp. 4-6; *US Cellular Comments* at pp. 28-30; *King Street Comments* at pp. 3-4; *CCA Comments* at pp. 5, 10.

⁷ *RWA/NTCA Comments* at p. 5.

carefully prescribed these as things that the Commission “shall” (not “should”, or “may” or “should try to”) do.”⁸ The Commission cannot rely upon the potential availability of secondary market transactions to fulfill these obligations, since secondary markets are not a reliable source of spectrum for small and rural carriers.⁹

In contrast, comments of AT&T and others that have urged the Commission to adopt EA licensing for the 600 MHz band spectrum either ignore these most fundamental obligations of the Commission in designing systems of competitive bidding, or they mischaracterize EAs as “draw[ing] the appropriate balance between enabling the efficient deployment of nationwide and regional services, and facilitating access to spectrum by small providers.”¹⁰ The record in this proceeding clearly demonstrates otherwise. The Commission must recognize these statutory protections for small businesses and rural telephone companies that are the *sine qua non* for the Commission receiving and maintaining its authority to conduct auctions,¹¹ and it should develop a licensing model for the 600 MHz band that provides opportunity through the availability of CMA-sized licenses.

b. CMA Licensing Will Provide Additional Public Interest Benefits

In addition to allowing the Commission to meet its statutory obligations under the Communications Act, the record shows that CMA licensing of the 600 MHz band will allow the

⁸ *King Street Comments* at p. 3.

⁹ *RWA/NTCA Comments* at pp. 17-19 (citing the NERA Report findings that “there are many examples of larger operators acquiring spectrum from smaller players over the last five years...[but] there is little recent history of the larger carriers leasing, disaggregating or partitioning large sections of spectrum where they already have service.” *See also*, Comments of United States Cellular Corporation, GN Docket No. 13-185 at p. 31 (*filed* Sept. 18, 2013) (“*U.S. Cellular AWS-3 Comments*”) (spectrum divestitures by partition, disaggregation, and leases to small and rural carriers “have been, and likely will continue to be, the exception rather than the rule.”)

¹⁰ Comments of Verizon and Verizon Wireless (*filed* January 9, 2014) (“*Verizon Comments*”) at p. 4.

¹¹ *King Street Comments* at p. 4.

Commission to fulfill other important public interest objectives, including promoting wireless competition from a diverse pool of service providers,¹² increasing the amount of interference-free spectrum that will be available for bidding,¹³ and resulting in better and more uniform coverage with less uncovered areas.¹⁴ In contrast, larger geographic licenses, such as EAs or PEAs, are likely to result in rural spectrum that is “locked up” in larger markets where licensees are focused on providing service to metropolitan areas. The Blooston Rural Carriers appreciate CCA’s offer to reduce the size of particular PEAs west of the Mississippi River to address rural carrier concerns,¹⁵ however, adjusting the boundaries of a handful of particular PEAs will not address the legitimate concerns of all small and rural carriers that may wish to participate in the 600 MHz auction from states throughout the West and Midwest, and it would not provide entrepreneurs with sufficient flexibility to develop alternative bidding strategies, if they may be interested in bidding for footprints of licenses in different states. PEAs do not match the CMAs or clusters of CMAs where rural carriers hold licenses, and would force them to bid against large carriers with deep pockets for licenses that include areas where they have neither the means nor the desire to provide service.

II. Package Bidding Should Not Be Allowed in the 600 MHz Incentive Auction

As with support for CMA licensing, the record shows a widespread belief among commenters other than the largest nationwide carriers that package bidding has significant potential for harm in the 600 MHz Incentive Auction.¹⁶ Both U.S. Cellular and T-Mobile

¹² *King Street Comments* at pp. 6-7;

¹³ *US Cellular Comments* at pp. 27-28; *King Street Comments* at p. 7

¹⁴ *King Street Comments* at p. 7

¹⁵ *CCA Comments* at p. 3.

¹⁶ *CCA Comments* at p. 7; *King Street Comments* at pp. 8-9; Comments of Cellular South, Inc. d/b/a C-Spire

provide detailed analysis rooted in auction theory along with real world examples to demonstrate how package bidding may unnecessarily complicate the 600 MHz Incentive Auction and grant preference to some bidders over others.¹⁷ In this regard, CCA correctly observes that “[e]xcessive reliance on package bidding would bias the auction in favor of larger carriers that have greater resources to manage the complexity entailed by such a process.” The Blooston Rural Carriers also agree with C-Spire that package bidding on a large scale would inject unnecessary and costly complexity into the bidding process that will disadvantage bidders that are focused on specific licenses or regions of the country, as opposed to nationwide footprints. For this reason, should the Commission nonetheless find it in the public interest to include some opportunity for package bidding in the forward auction of 600 MHz spectrum, it should prohibit package bidding for CMA licenses, because this will undo the significant public interest benefits that would be created though making CMA licensing available in the first place.

Supporters of package bidding believe it is imperative for the Commission to allow for package bidding “to address the even greater exposure risks that would be created by more disaggregated license areas.”¹⁸ However, the Blooston Rural Carriers believe the alleged “risk” that AT&T claims to face from disaggregated license areas is overblown. It is plainly evident that package bidding will “gift wrap” 600 MHz over large geographic areas for the largest carriers that already overwhelmingly dominate the industry. Concerns about an “exposure problem” is another way of saying “nationwide carriers will be forced to pay more if they want a particular license.” All auction bidders face this risk, and should face this risk equally. This

Wireless (filed January 9, 2014) (“C-Spire Comments”) at pp. 3-4.

¹⁷ US Cellular Comments at pp. 32-48; Comments of T-Mobile USA, Inc. (filed January 9, 2014) (“T-Mobile Comments”) at pp. 2-6.

¹⁸ December 3, 2013 Ex Parte Letter of AT&T, GN Docket No. 12-268 (AT&T 12/3 Ex Parte Letter) at p. 1; Comments of AT&T (filed January 9, 2014) at pp. 4-9;

rationale ensures that spectrum licenses go to those individuals or entities who value them most. If the FCC adopts a hybrid approach favored by the Blooston Rural Carriers and others, both EA and CMA licenses will be available for bidding, reducing the “exposure risks” suggested by AT&T. AT&T claims that its hierarchal package bidding proposal would “satisfy the substance of the Commission’s statutory mandate to “consider assigning licenses that cover geographic areas of a variety of different sizes.”¹⁹ However, this ignores the Commission’s other fundamental obligations under the Communications Act. Availability of successively larger “packages” of 600 MHz licenses that begin with EAs as the smallest component would not be consistent with the intent of Congress. The Commission must view its obligations under the Middle Class Tax Relief and Job Creation Act of 2012 in the context of its other statutory obligations under the Communications Act, which were not superseded. This includes the Commission’s obligations under Section 309(j) to ensure that auctions are used to disseminate licenses among a wide variety of applicants, including small businesses and rural telephone companies, and promoting economic opportunity by ensuring an equitable distribution of licenses and services among geographic areas.

Conclusion

Wherefore, the Blooston Rural Carriers urge the Commission to foster opportunities for rural and independent service providers by adopting CMA licensing for the forward licensing of 600 MHz band spectrum that is reclaimed from the broadcast incentive auction and limiting package bidding, especially for CMA-sized licensing other measures consistent with these reply comments.

¹⁹ *AT&T Comments* at pp. 7-8.

Respectfully submitted,
BLOOSTON RURAL CARRIERS



By: _____

D. Cary Mitchell
John A. Prendergast
Harold Mordkofsky

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, NW, Suite 300
Washington, DC 20037
Phone: (202) 659-0830
Facsimile: (202) 828-5568

Filed: January 23, 2014