Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Auction of Advanced Wireless Services Licenses; Competitive Bidding Procedures for Auction 97	)))	AU Docket No. 14-78

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association ("CCA") hereby submits this reply to comments on proposals made in response to the Commission's *Public Notice* regarding the competitive bidding procedures for the auction of AWS-3 spectrum in Auction 97.[1]

Like CCA, other commenters in this proceeding recognize the critical importance of ensuring that procedures adopted for this auction provide ample opportunities for a wide range of carriers—and not just the largest two—to acquire much-needed spectrum to relieve constraints on wireless networks throughout the United States.[2] Spectrum that will be made available in this auction will enable small and regional carriers to provide competition to dominant national carriers and to deploy broadband networks in rural and underserved areas.[3] Auction 97 thus should be designed and implemented in a manner that promotes economic growth and

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1 *Auction of Advanced Wireless Services Licenses; Comment Sought on Competitive Bidding Procedures for Auction 97*, AU Docket No. 14-78, Public Notice, DA 14-669 (rel. May 19, 2014) ("*Public Notice*").

2 *See, e.g.*, Comments of T-Mobile USA, Inc., AU Docket No. 14-78, at 1-2 (filed June 9, 2014) ("T-Mobile Comments"); Comments of United States Cellular Corporation, AU Docket No. 14-78, at 2-3 (filed June 9, 2014) ("USCC Comments"); Comments of Cellular South, Inc., AU Docket No. 14-78, at 1-2 (filed June 9, 2014) ("C Spire Comments").

3 USCC Comments at 3-4.

competition for the wireless industry as a whole, by generating opportunities for competitive providers and new entrants to spur greater innovation and access to wireless services.[4]

The opening comments in this proceeding support CCA's procedural recommendations. CCA's proposals for the final payment deadline, separate procedures for paired and unpaired spectrum, and avoiding blind and package bidding procedures will provide the certainty and opportunities necessary to promote full and efficient participation by all bidders in the auction.

CCA also supports Verizon Wireless's proposal to establish a minimum opening bid amount of $0.05 per MHz-POP, and a minimum acceptable bid limit of 20 percent. Reducing the thresholds proposed in the *Public Notice* to these levels will promote greater participation in the auction by small, mid-sized and rural carriers, and will more accurately capture the value of AWS-3 spectrum. Finally, the record is replete with broad-ranging support for a waiver of the former defaulter rule with respect to federal debts of relatively small amounts or that were resolved well in the past, and the Commission should respond accordingly.

I. THE RECORD REFLECTS BROAD SUPPORT FOR CCA'S PROCEDURAL RECOMMENDATIONS

A. Bidders Require Certainty Regarding the Deadline for Final Payments

In its opening comments, CCA requested clarification that long-form applications and the corresponding final payments in Auction 97 will not be due until 2015 to allow bidders certainty in arranging financing for the auction and to manage cash outlays for their business plans, both for the current calendar year 2014 and for 2015. Verizon Wireless concurs with CCA that "bidders must have some certainty regarding when these costs will be incurred so they can

[4] *See* C Spire Comments at 1-2.

determine the most efficient means of financing their auction participation."[5] Verizon Wireless notes the significant amounts that potential bidders plan to spend to acquire spectrum in Auction 97, which would have a considerable impact on financial reports and planning if such amounts were unexpectedly due at year-end in 2014. CCA agrees that there is ample time to meet the February 22, 2015 statutory deadline for granting licenses in this auction if the final payment deadline is set for early in 2015.[6] Should the Commission wish to keep in place its customary practice of requiring long-form applications to be submitted within 10 business days of an auction closing, however, it could do so while allow allowing down payments and final payments to be due in 2015.[7]

B. Disparities Between Paired and Unpaired Spectrum Blocks Necessitate Separate Application of Certain Auction Procedures

CCA's opening comments propose that the upfront payment requirements, bidding eligibility, activity waivers, and stopping rules for the unpaired 1695-1710 MHz bands be separately applied from those for the other paired AWS-3 spectrum blocks, due to the differing characteristics of the unpaired versus paired spectrum blocks. In particular, CCA remains concerned that the auction could be gamed by "parking" bidding eligibility in unpaired blocks.

T-Mobile USA, Inc. ("T-Mobile") and DISH Network Corporation ("DISH") voice the same concerns, and elaborate on the differences between paired and unpaired spectrum blocks

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5 Comments of Verizon Wireless, AU Docket No. 14-78, at 2 (filed June 9, 2014) ("Verizon Wireless Comments").

6 *See id.* (proposing that the deadline for down payments could be set for January 15, 2015, and the final payments to be made by the later of January 29, 2015 or twenty business days after the auction closes).

7 *See Ex Parte* Letter from Scott K. Bergmann, Vice President, Regulatory Affairs, CTIA – The Wireless Association and Jill Canfield, Director – Legal & Industry and Assistant General Counsel, NTCA – The Rural Broadband Association to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 at 2 (filed May 14, 2014).

from the standpoint of desirable auction design. Paired and unpaired spectrum bands will have different federal government coordination obligations and different technical requirements, which will result in vastly different uses.[8] They are not substitutes or interchangeable and should not be treated as such. T-Mobile and DISH thus ask that the stopping rules, bidding eligibility and activity waivers be applied separately to paired and unpaired spectrum in order to prevent "parking" of bidding eligibility to artificially prolong the auction.[9]

Such comments affirm CCA's concern that bidders may be able to game the system by adopting such a strategy, which would be detrimental to efficiency and transparency in the auction. DISH agrees with CCA that these unintended consequences would disproportionately hurt smaller competitors and potential new entrants participating in Auction 97, and could depress auction revenue.[10] Thus, CCA urges the Commission to adopt rules that will prevent strategic behavior and enhance the efficiency in assigning spectrum licenses, and that obviate harm to smaller bidders and new entrants.

C. There is Record Support for Procedures That Promote Transparency

The proposal in the *Public Notice* to adopt anonymous bidding in Auction 97 would significantly limit bidders' access to information that is critical to making value determinations regarding particular spectrum licenses. Like CCA, United States Cellular Corporation ("USCC") urges the Commission to refrain from adopting anonymous, or "blind," bidding procedures in this auction, and instead revert to the level of transparency afforded in earlier auctions, where the Commission recognized the "'advantages of providing more information to bidders and the

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8 Comments of DISH Network Corporation, AU Docket No. 14-78, at 5 (filed June 9, 2014) ("DISH Comments"); T-Mobile Comments at 3.

9 *See* T-Mobile Comments at 3-4; DISH Comments at 8.

10 DISH Comments at 2-3, 6.

difficulties involved in ensuring that bidder identities remain confidential.'"[11] USCC emphasizes the efficiency benefits of full transparency in the auction, and the importance of assigning licenses to those who value them most highly. To develop accurate spectrum valuations during the auction, bidders must possess sufficient information, including information regarding the identity of bidders bidding on neighboring spectrum, and the amounts of the bids,[12] while at the same time not being subject to retaliatory bidding resulting from an open auction process.[13] While this valuation process is complex, blind bidding only exacerbates these challenges, which disproportionately disadvantage smaller and midsize carriers.[14] Further, the uncertainty created by anonymous bidding makes it more difficult for smaller bidders to obtain outside financing for the auction, as investors may be unwilling to assume the added risk created by a deficiency of real-time information in the auction.[15] Moreover, USCC notes that the risk of collusive bidding tactics that blind bidding aims to resolve is relatively small, and the Commission has never posited otherwise. CCA agrees.[16]

D. The Commission Should Reject Verizon Wireless's Proposal for Nationwide Package Bidding and Refrain from Adopting Package Bidding In Any Form

As CCA noted in its opening comments, package bidding procedures are conspicuously absent from the *Public Notice*, strongly indicating a determination by the Commission not to adopt such procedures in Auction 97. CCA is joined on the record by Cellular South, Inc.

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11 USCC Comments at 9 (*citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Memorandum Opinion and Order, 9 FCC Rcd 7245, 7252 (1994)).

12 *Id.* at 10.

13 C Spire Comments at 2-3.

14 USCC Comments at 11.

15 *Id.*

16 *Id.* at 12. USCC states that the advantages of blind bidding "are largely theoretical and marginal, making it unnecessary." *Id.*

("C Spire") and USCC in urging the Commission to refrain from adopting package bidding procedures for Auction 97. C Spire echoes the same concerns as CCA that injecting complexity into the bidding process by allowing package bidding would confer overwhelming advantages to larger carriers who will be afforded the opportunity to acquire spectrum at prices that are below market value.[17] C Spire confirms CCA's view that the added complexity and uncertainty for bidders that do not take advantage of package bidding is unnecessary and has the potential to generate lower auction participation and proceeds.[18] USCC similarly echoes CCA's concern that package bidding disadvantages all but the largest bidders.[19] In contrast, Verizon Wireless proposes to segregate all but 10 MHz of paired spectrum in this auction for bidding on a nationwide package basis. The arguments in support of this proposal, however, are belied by the record and the balancing of priorities struck by the Commission in the AWS-3 Report and Order.

Verizon Wireless asserts that a bidder would face an "exposure problem" if it fails to acquire all licenses necessary to meet the requirements of its business plan.[20] As USCC points out, Verizon and AT&T "made clear that larger license areas, such as the EA-based licenses adopted for 55 of the 65 MHz of spectrum being offered in Auction 97, would significantly mitigate the 'exposure risks' they allegedly would face if they could not submit bids on packages of smaller license areas."[21] The Commission agreed in deciding to license most of the available paired spectrum on an EA basis, finding that large carriers would be able to aggregate up

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17 C Spire Comments at 3.

18 *See id.*

19 *See* USCC Comments at 7-8.

20 Verizon Wireless Comments at 9.

21 USCC Comments at 8.

spectrum into larger MEAs and REAGs.[22] Rather than an exposure problem, smaller bidders face a foreclosure problem, having to rely on other bidders to break a package, which results in an inefficient allocation of spectrum resources. Contrary to Verizon Wireless's claim, the overall value reflected in a package bid incorporates a discount over what other bidders may have been willing to bid for discrete areas. Verizon Wireless's rationalization for package bidding does not justify the substantial risk that smaller operators and new entrants, who may place a higher value on an individual license, will be shut out of the auction.[23]

Verizon Wireless proffers the benefit to bidders of being able to "commit more of their resources toward acquiring licenses in the auction, rather than trying to meet their goals later in the secondary market."[24] Again, this argument is contrary to the careful balance crafted by the Commission in the underlying Report and Order, which found that licensing by EAs (as opposed to smaller CMAs) "will enable large carriers to minimize post-licensing aggregation costs."[25] Moreover, any such purported benefits would apply only to the small subset of bidders that have the resources to bid on a nationwide package of licenses, leaving the majority of potential bidders with fewer opportunities to acquire smaller swaths of spectrum at auction. As Verizon Wireless suggests, smaller and regional carriers would then need to seek out spectrum on the secondary market (potentially from larger carriers that acquired such spectrum below market value in a nationwide package), which would delay deployment in the areas that larger carriers do not prioritize for buildout.

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22 *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, Report and Order, 29 FCC Rcd 4610, 4633 ¶ 49 (2014) ("*AWS-3 R&O*").

23 *See* C Spire Comments at 3.

24 Verizon Wireless Comments at 9-10.

25 *AWS-3 R&O* at 4633, ¶ 49.

CCA thus urges the Commission to stay the course and not adopt Verizon Wireless's package bidding proposal, which would decrease auction participation, depress auction revenues, and delay deployment of broadband services to rural areas.

II. CCA SUPPORTS PROPOSALS TO REDUCE THE MINIMUM OPENING BID FORMULA AND THE BID INCREMENT LIMIT

Appropriate minimum opening bids and maximum acceptable bids are important components of auction design that impact the level of participation at the start of the auction, and the level of activity throughout the course of the auction. Verizon Wireless suggests using a $0.05 per MHz-POP minimum opening bid calculation, rather than the $0.15 per MHz-POP value for paired licenses proposed in the *Public Notice*.[26] Verizon Wireless makes an apt comparison to the AWS-1 auction, where the minimum opening bid formula was based on $0.05 per MHz-POP in urban areas and $0.03 per MHz-POP in rural areas.[27] CCA agrees that adopting an amount that is consistent with prior auctions for similar spectrum makes good sense to promote broader auction participation. Increasing the minimum opening bid amounts threefold for paired spectrum threatens to put this spectrum out of reach for smaller or regional carriers who may be unable to meet these higher minimum opening thresholds.

Similarly, establishing a minimum acceptable bid increment limit of 30 percent, as proposed in the *Public Notice*, could accelerate prices in the auction too quickly, which could in turn have the effect of causing bidders, especially smaller or rural carriers, to drop out of the auction prematurely in subsequent rounds of bidding if they cannot meet the established minimum.[28] If such a bidder is willing and able to bid at a lower increment, the license can be

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[26] *Id.* at 6; *Public Notice* at ¶¶ 54, 56.

[27] Verizon Wireless Comments at 6.

[28] *Id.* at 5; USCC Comments at 17; *see also Public Notice* at ¶ 62.

sold for a higher price. Thus, CCA agrees that a bid increment that is too high may have the effect of lowering overall auction revenues and could prevent the bidder that assigns the highest value to the license from acquiring it.[29] As such, CCA supports the proposals of Verizon Wireless and USCC to lower the minimum acceptable bid limit to 20 percent, which will adequately balance the need to ensure that the auction proceeds quickly, while providing bidders the flexibility needed to bid spectrum up to its true value, thereby maximizing auction revenue.[30]

III. THE RECORD CONTAINS WIDE-RANGING SUPPORT FOR A WAIVER OF THE FORMER DEFAULTER RULE IN AUCTION 97

There is broad support in the record for granting a waiver in the context of Auction 97 of Section 1.2106(a) of the Commission's rules (the "former defaulter" rule). As previously supported in this proceeding by CCA and others, DISH, AT&T Services Inc. ("AT&T"), Verizon Wireless, and Spectrum Financial Partners, LLC, each ask the Commission to grant a limited waiver of the former defaulter additional upfront payment obligations for debts that (i) were resolved more than three years prior to the short-form application deadline in Auction 97, or (ii) were for less than the lesser of $100,000 or 0.1 percent of the average annual revenues of the applicant (as computed under the Commission's competitive bidding rules).[31] As AT&T observes, application of the additional upfront payment requirement in these circumstances would result in "unfairly and unnecessarily inflating upfront payments without addressing the

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29 *See* USCC Comments at 17.

30 *See* Verizon Wireless Comments at 6; USCC Comments at 18.

31 *See* DISH Comments at 19; Comments of AT&T Services Inc., AU Docket No. 14-78, at 4 (filed June 9, 2014) ("AT&T Comments"); Verizon Wireless Comments at 3-4; Comments of Spectrum Financial Partners, LLC, AU Docket No. 14-78, at 3 (filed June 9, 2014).

Commission's concerns regarding the need for additional security in some cases to ensure that winning bidders will be capable of payment for licenses in full at the close of the auction."[32]

Other commenters in this proceeding acknowledge, as CCA noted in its comments, that bidders will continue to be required to be current on all payment obligations to federal agencies, and that the additional upfront payment will still apply to former defaulters that had debt of substantial amounts or that were recently owed.[33] Notably, all applicants will be required to pay for their licenses in full before they are granted, as Auction 97 will not employ installment payments, and thus there is no risk to the Commission of license financing defaults.[34] Therefore, the Commission should grant the requested relief from the former defaulter rule.

IV. CONCLUSION

For the foregoing reasons, and as stated in CCA's opening comments and based on the record, the Commission should adopt competitive bidding procedures for Auction 97 that will maximize participation by a broad range of carriers, thereby maximizing auction revenues and promoting competition for wireless services. Adopting the proposals herein and in CCA's opening comments would advance these goals.

Respectfully submitted,

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32 AT&T Comments at 4.

33 *See, e.g.*, DISH Comments at 20.

34 Verizon Wireless Comments at 4.