

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Auction of Priority Access Licenses for the) AU Docket No. 19-244
3550-3650 MHz Band; Comment Sought)
On Competitive Bidding Procedures for)
Auction 105; Bidding in Auction 105)
Scheduled to Begin June 25, 2020)

To: The Commission

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

The Wireless Internet Service Providers Association (“WISPA”) hereby comments on the Commission’s Public Notice seeking public input on procedures for the auction of Priority Access Licenses (“PALs”) in the Citizens Broadband Radio Service (“CBRS”).¹

Introduction

Since before CBRS was conceived, WISPA and its members have demonstrated a very strong interest in gaining access to mid-band spectrum to increase coverage of fixed wireless broadband networks. Before the docket leading to the adoption of rules in 2015, WISPA supported the release of federal spectrum for commercial purposes.² In the docket establishing CBRS, WISPA supported the three-tier spectrum sharing regime and the inclusion of the 3650-3700 MHz band in CBRS with incumbent protection to avoid disruption of service to thousands of broadband consumers.³ When the Commission decided to revisit its CBRS rules in 2017,

¹ Public Notice, *Auction of Priority Access Licenses for the 3550-3650 MHz Band; Comment Sought on Competitive Bidding Procedures for Auction 105; Bidding in Auction 105 Scheduled to Begin June 25, 2020*, AU Docket 19-244, FCC 19-96 (rel. Sept. 27, 2019) (“*Auction Procedures PN*”).

² See Comments of WISPA, ET Docket No. 10-123 (filed Apr. 22, 2011).

³ See Comments of WISPA, GN Docket No. 12-354 (filed Feb. 20, 2013); Reply Comments of WISPA, GN Docket No. 12-354 (filed Apr. 5, 2013).

WISPA advocated against establishing large Partial Economic Areas for PALs, and worked with other parties and the Commission to develop the alternative of using counties for the auction's geographic units.⁴ WISPA also appreciates the Commission's inclusion of small business and rural provider bidding credits for the PAL auction.⁵

Although mid-band spectrum will support 5G services to increase wireless *capacity*, WISPA has emphasized the benefits of CBRS spectrum for *coverage*, especially in sparsely populated rural areas that would benefit from the propagation characteristics and other benefits inherent in mid-band spectrum.⁶ Throughout the process, WISPA has maintained its request for auction rules and procedures that afford WISPs and smaller companies a meaningful opportunity to acquire PALs. To this end, while county-based licenses may not be ideal for many WISPA members, they may be sufficiently small enough to encourage meaningful participation by smaller fixed wireless companies in some counties – but only if the auction procedures do not result in *de facto* foreclosure at the starting gate.

WISPA welcomes the opportunity to provide comment on the *Auction Procedures PN*. WISPA also appreciates the inclusion of additional questions in the *Auctions Procedures PN* concerning the applicability of auction procedures that will encourage robust PAL bidding in rural areas.⁷

⁴ See, e.g., Letter from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, GN Docket No. 17-258 (filed Sept. 10, 2018) (ex parte notice reiterating WISPA position of retaining census tracts for PALs).

⁵ *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd 10598, 10645-48 (2018) (“2018 CBRS Order”).

⁶ See Comments of WISPA, GN Docket No. 17-258 (filed Dec. 28, 2017) at 3, 27.

⁷ See *Auction Procedures PN* at 10, ¶¶ 32-33.

Discussion

The *Auction Procedures PN* seeks comment on a proposal to allow bidders to bid at the Cellular Market Area (“CMA”) level for the 172 CMAs that have two or more counties.⁸ This proposal stems from the Commission’s statement in the *2018 CBRS Order* where the Commission indicated that it would “seek comment . . . on allowing package bids for the counties that comprise a complete MSA in the top 305 markets.”⁹

WISPA appreciates the Commission’s attempt to craft procedures that deter CMA-level bidders from engaging in bidding strategies that would harm the ability of small companies from acquiring PALs in counties. Ultimately, after carefully studying the CMA-level bidding proposal, and for the reasons set forth below, WISPA opposes any form of package bidding, including CMA-level bidding and requests that the Commission reject this proposal. First, bidders seeking to combine counties do not need CMA-level bidding in order to assemble spectrum blocks across multiple counties. CMA boundaries use county borders that may not correspond to natural geographic or demographic markets that bidders may prefer. CMA-level bidding thus constrains bidders to build their strategy around artificially aggregated CMAs, an unnecessary complication that is especially burdensome on larger mobile carriers seeking to add capacity in more densely populated urban areas of CMAs.

Second, PALs in multi-county areas can be assembled through county-level bids that afford bidders greater flexibility to design bids in a way that does not include undesirable counties in the CMA-level bid. Contrary to the Commission’s view that CMA-level bidding “could give greater bidding flexibility to bidders interested in serving areas larger than a

⁸ See *id.* at 8, ¶ 25.

⁹ *2018 CBRS Order* at 10621.

county,”¹⁰ CMA-level bidding will make it more challenging for companies that may desire to acquire PALs in rural counties that would be less desirable for large carriers looking to establish a larger geographic footprint of licenses.

Third, eliminating CMA-level bidding will reduce the likelihood that large carriers will bid up the rural counties within the CMAs and prejudice entities such as WISPA members seeking to provide fixed wireless broadband coverage in the rural counties. As noted in a 2015 article, “[f]undamentally, the smaller the license territory, the lower the expected price per license because there are fewer people or ‘POPs,’ meaning fewer potential subscribers in each territory.”¹¹ As such, because a CMA-level bidder will need to be the high bidder for at least one PAL in each constituent county in the CMA, it will be necessarily bid aggressively in the rural counties where the overall cost would otherwise be less, and factor that additional cost across the entire CMA. By contrast, a small WISP that desires only the rural county in the CMA would face higher prices from a deep-pocketed bidder and have little or no chance of obtaining PAL spectrum. As NCTA pointed out in its recent ex parte presentation, such “price steering” “creates strong incentive for county bidders to bid on what they don’t want” and would create “[c]haotic and inefficient outcomes.”¹² Foreclosing competitive bidding opportunities for smaller

¹⁰ *Auction Procedures PN* at 9, ¶ 29.

¹¹ William Lehr and J. Armand Musey, *Right-Sizing Broadband Spectrum Auction Licenses: The Case for Smaller Geographic Licenses in the TV Broadcast Incentive Auction*, 37 HASTINGS COMM. & ENT. L.J. 231, 247 (2015).

¹² Letter from Danielle Pineres, NCTA, to Marlene H. Dortch, FCC Secretary, AU Docket No. 19-244 (filed Oct. 15, 2019) (“NCTA Letter”) at Attachment p.5. *See also* Letter from Michael Calabrese, Open Technology Institute/New America, to Marlene H. Dortch, FCC Secretary, AU Docket No. 19-244 (filed Oct. 17, 2019) (stating that the proposed CMA-level bidding process “would have the effect of driving the price of rural and other less densely populated counties in the 172 CMAs up above the level they would reach if auctioned individually by county”).

fixed wireless providers will not advance the Commission’s “top priority” of bridging the digital divide.¹³

Fourth, the NCTA Letter identifies the potential that a CMA-level bidder could abandon bidding in a CMA during the auction, thereby reducing demand below seven PALs and leaving PALs unsold – PALs that, in a county-based auction, could have been sold to another bidder, and in all likelihood would have been sold had CMA-level bidding as proposed not resulted in higher than necessary prices across the CMA and excess unsold PALs.¹⁴ In this way, the larger CMA-level bidder would be “able to foreclose smaller competitors at no cost.”¹⁵ This possibility poses a huge threat to WISPA’s smaller members, who would be unable to acquire PALs even where there is excess PAL supply.

Fifth, CMA-level bidding combined with county-level bidding would create bidding complexity favoring those large companies that can afford to engage the limited number of economists and game theorists to advise them. Small carriers desiring PALs in only one or a handful of counties will not have the resources to compete for such experts and will be disadvantaged by those that have more expertise at their disposal. Moreover, the Commission’s prohibited communication rule may limit consultants to representing only a single bidder, so the demand for auction consultants will undoubtedly exceed the supply. However, simplifying the auction to allow only county-level bids would, for many bidders, eliminate their disadvantage

¹³ *Rural Digital Opportunity Fund, Connect America Fund*, Notice of Proposed Rulemaking, 34 FCC Rcd 6778, 6779 (2019).

¹⁴ See NCTA Letter at Attachment p. 6. This possibility is also demonstrated by the Commission’s Technical Guide at the end of Example 8, in which a CMA-level bidder reducing demand from 1 to 0 blocks would result in excess demand in 4 out of 5 counties, and one county having excess demand of four blocks. See *Auction 105 Technical Guide*, AU Docket No. 19-244 (rel. Sept. 27, 2019) at 15-16, available at <https://www.fcc.gov/auction/105/education>. If the stopping rule were to be met during that round, those results would be locked in, and could have been entirely avoided with county-level bidding.

¹⁵ NCTA Letter at 6.

because they will not need to account for the complexities and strategies involved with having both CMA-level and county-level bidding.

Conclusion

The Commission should reject the proposal to allow CMA-level bidding and instead permit bidding at the county level only. County-based bidding will increase flexibility, prevent foreclosure of smaller bidders and simplify the auction for all bidders including smaller entities.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

By: /s/ Louis Peraertz
Louis Peraertz, Vice President of Policy
447 13th Street, #317
Saint Cloud, FL 34769

October 28, 2019