

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

In the Matter of	)	
	)	
Competitive Bidding Procedures for	)	AU Docket No. 13-178
Auction 96	)	

**COMMENTS OF UNITED STATES CELLULAR CORPORATION**

Grant B. Spellmeyer  
Vice President  
Federal Affairs and Public Policy  
UNITED STATES CELLULAR CORPORATION  
555 - 13<sup>th</sup> Street, N.W., Suite 304  
Washington, DC 20003  
Phone: 202-290-0233  
Fax: 646-390-4280  
Email: grant.spellmeyer@uscellular.com

George Y. Wheeler  
Peter M. Connolly  
Leighton T. Brown  
HOLLAND & KNIGHT LLP  
800 17th Street, N.W., Suite 1100  
Washington, DC 20006  
Phone: 202-955-3000  
Fax: 202-955-5564  
E-mail: george.wheeler@hkllaw.com  
*Its Attorneys*

August 5, 2013

**TABLE OF CONTENTS**

I. INTRODUCTION AND SUMMARY.....2

II. THE BUREAU SHOULD NOT ADOPT ANY FORM OF PACKAGE BIDDING.....6

    A. Package Bidding Would Add Unnecessary Complexity to Auction 96.....6

    B. Package Bidding Would Put Smaller Bidders at a Significant Disadvantage..... 7

    C. While Package Bidding Would Significantly Disadvantage Smaller Bidders, the Hypothetical Advantage it Provides Nationwide Carriers is Unnecessary..... 10

    D. The Bureau’s HPB Proposal Would Not Adequately Address the Substantial Harms Package Bidding Inflicts Upon Smaller Bidders..... 12

    E. Package Bidding Would Violate the Commission’s Statutory Obligations..... 15

    F. Package Bidding Would Conflict with the Overwhelming Record in the H Block Rulemaking Proceeding.....16

III. THE BUREAU SHOULD NOT ADOPT ANONYMOUS BIDDING PROCEDURES.....18

IV. CONCLUSION.....26



below, in order to prevent such an outcome, the Bureau should not adopt any form of package bidding or implement anonymous bidding procedures for Auction 96.

## I. INTRODUCTION AND SUMMARY

As an initial matter, USCC applauds the Bureau's commitment to hold Auction 96 no later than January 2014.<sup>4</sup> Prompt action to free up additional spectrum is needed to keep pace with consumers' skyrocketing demand for mobile services.<sup>5</sup> Notably, the characteristics of the H Block make it particularly well suited for near-term deployment. As Sprint previously explained, the "H Block represents the only spectrum cleared of incumbents and ready for immediate auction, licensing, and deployment, rapidly providing additional spectrum to bolster the speed, capacity, and ubiquity of mobile broadband networks."<sup>6</sup> In addition, the H Block's location should allow for quick and cost-effective deployments because it "represents the last natural expansion band for PCS and existing PCS licensees can incorporate this spectrum into their operations to offer additional capacity and expanded mobile services to consumers."<sup>7</sup>

Due to these characteristics of the H Block, Auction 96 has the potential to promote competition and spur network deployments in rural and other underserved areas.<sup>8</sup> Unfortunately, some of the Bureau's proposed bidding procedures would uniquely disadvantage smaller bidders, and thereby substantially reduce the likelihood of success for small and regional carriers in

---

promotes economic growth and competition in the wireless industry while avoiding the harms caused by the concentration of spectrum licenses in the hands of too few licensees.").

<sup>4</sup> See Notice at ¶ 1.

<sup>5</sup> See *H Block R&O*, 28 FCC Rcd at 9484 (noting that the H Block "will help ensure that the speed, capacity, and ubiquity of the Nation's wireless networks keep pace with the skyrocketing demand for mobile services.").

<sup>6</sup> Comments of Sprint Nextel Corporation ("Sprint") at i.

<sup>7</sup> *Id.* at 1; see *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16135 (2012) ("*AWS-4 R&O*") ("[E]xtensions of existing bands can typically be put to use more cost-effectively than new bands.").

<sup>8</sup> See Comments of Cellular South at 2 ("With the auction of the H Block spectrum, the Commission has the opportunity to address further wireless industry consolidation while generating new opportunities for competitive operators and new entrants to spur greater innovation and access to wireless services.").

Auction 96. Absent any auction success by these bidders, who otherwise could use H Block spectrum to become more viable competitors and to deploy networks in underserved areas, the potential for Auction 96 to substantially promote the public interest will be squandered, auction revenue will be lower, and the Commission's goals for the H Block will be thwarted.<sup>9</sup> These comments therefore focus on two bidding procedures which, if structured as proposed by the Bureau, would greatly reduce the likelihood that smaller bidders will succeed in Auction 96.

First, USCC urges the Bureau to conduct Auction 96 using a standard simultaneous multiple-round ("SMR") auction format, and decline to adopt any form of package bidding, including hierarchical package bidding ("HPB"). Package bidding would increase risk and uncertainty for smaller bidders, who lack the substantial resources of those most likely to be package bidders. Package bidding also would increase the likelihood that large bidders will tie-up multiple licenses in large package bids, and thereby exclude smaller carriers with targeted business plans from acquiring the spectrum necessary to serve rural areas. Further, unlike a license-by-license aggregation strategy, package bidding can force the Commission to accept a package bid even though others placed higher bids, on a per-pop basis, for one or more of the licenses included in the package. The result is that package bidding biases auction results in favor of the package bid, disadvantaging all but the largest bidders and likely excluding smaller bidders from any meaningful auction participation. At the same time, package bidding creates substantial exposure risks for small bidders because of its potential to reactivate dormant bids.

For these reasons, package bidding would decrease auction participation by everyone but the largest carriers, which would decrease auction revenue and raise legal issues as to whether

---

<sup>9</sup> See, e.g., *H Block R&O*, 28 FCC Rcd at 9496 ("[W]e expect that adopting the paired band plan will facilitate the deployment of wireless fixed and mobile services in rural areas."); *id.* at 9608 (Statement of Commr. Pai) ("[W]e take several steps to ensure that the auction to come will yield maximum revenue and that the H Block spectrum is put to its highest-valued use.").

Auction 96 complied with the Commission's statutory obligations. At the same time, package bidding is unnecessary because adequate spectrum aggregation opportunities are available under the Commission's standard auction procedures.

Moreover, the Bureau's HPB proposal would not adequately remedy these public interest harms. Not only would HPB fail to fully address package bidding's inherent complexity, it could in fact harm smaller bidders to an even greater extent because the predefined packages would invariably contain all of the available H Block license areas, not simply those most desired by the largest bidders. Specifically, HPB's predefined packages could cause less densely-populated markets, which large bidders typically do not focus on during an auction because these markets are not a key part of their business plans, to "come along for the ride" and end up as part of a large package, and thus be out of reach for smaller bidders who truly desire to serve these more rural markets. In addition, because each package would be of at least a certain size, it would be even more difficult for bids on individual licenses to collectively exceed a package bid. Finally, package bidding would frustrate the Commission's intent when it licensed the H Block on an EA basis, and conflict with the overwhelming majority of commenters in the H Block rulemaking proceeding, who supported the use of a standard SMR auction format and license areas no larger than EAs, and who urged the Commission to ensure adequate opportunities for small and regional carriers to acquire H Block licenses.

Second, USCC urges the Bureau not to adopt anonymous, or "blind," bidding procedures because, absent information regarding other bidders, their bid amounts, and their bid eligibility, participation in Auction 96 will be less robust and the licenses will sell at depressed prices. This is because blind bidding makes it difficult for bidders to confidently assess the true value of a license. Particularly for smaller bidders, valuations depend on certain technical considerations –

*e.g.*, the availability of interoperable devices and adequate roaming opportunities – that require knowledge of likely other licensees. The harms blind bidding imposes upon smaller bidders are compounded by the fact that these same bidders are those most likely to require outside financing, which becomes far less likely if potential lenders lack sufficient information to accurately gauge the level of risk involved. Smaller bidders also face greater legal risks because of the inherent conflict between blind bidding and the public disclosure requirements of the Securities and Exchange Commission (“SEC”). For these reasons, the information disparities created by blind bidding have a disproportionately adverse effect on smaller bidders.

Moreover, while blind bidding gives rise to substantial public interest harms, its advantages are largely theoretical and marginal, making blind bidding unnecessary. There have been no serious allegations of collusive bidding in recent auctions, and, since the early auctions that were affected by collusion, the Commission and the Department of Justice have adopted rules and policies that adequately prevent collusive conduct. On the other hand, publicly disclosing bidding information would allow other auction participants to detect, and alert the Bureau regarding, collusive behavior before any significant damage is done.

Due to the advantages of providing more information to bidders, the difficulty of keeping bidder identities confidential, and the fact that anti-competitive bidding can be eliminated in other ways that do not disadvantage auction participants, the Commission has traditionally held fully transparent spectrum auctions. The Bureau should abide by this same logic here, particularly because Auction 96 likely will be highly competitive, which would significantly reduce the potential for bidding information to be used in an anti-competitive manner.

## II. THE BUREAU SHOULD NOT ADOPT ANY FORM OF PACKAGE BIDDING

USCC strongly opposes the use of any form of package bidding, including HPB, in Auction 96 because of the bias, complexity, and minimal real world experience related to this approach. As detailed below, in practice, package bidding could virtually eliminate the opportunity for smaller bidders to acquire licenses in Auction 96, without providing any substantial public interest benefits.<sup>10</sup>

### A. Package Bidding Would Add Unnecessary Complexity to Auction 96.

Package bidding would increase the complexity of Auction 96,<sup>11</sup> and thereby conflict with the Commission's expressed intent "to select bidding procedures that are not overly complex..."<sup>12</sup> This added complexity would particularly disadvantage smaller bidders, who lack the significant auction resources of the national carriers. Although the Bureau believes that "HPB considerably simplifies bidder strategy and computational complexity compared to some other forms of package bidding,"<sup>13</sup> it does not claim that HPB would not be more complicated than a standard SMR auction format without package bidding. Rather, even with HPB, each individual license would be subject to several bid possibilities in each round of the auction.<sup>14</sup> Package bidding also would complicate the auction for the Bureau.<sup>15</sup> For instance, as the Bureau noted, it would be forced to "estimate [] the price or bid of an individual license for the purpose

---

<sup>10</sup> See *Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, 2366 (1994) ("*Competitive Bidding Second R&O*") ("[S]ome of the conditions under which the advantages of combinatorial bidding are apt to be the greatest are not likely to be present for most FCC auctions.").

<sup>11</sup> See *id.* ("Combinatorial bidding would also add one more layer of complexity to implementing an auction.").

<sup>12</sup> *Id.* at 2361.

<sup>13</sup> Notice at ¶ 18.

<sup>14</sup> See *id.* at ¶ 20 (noting that HPB could consist of four tiers, including EAs, MEA packages, REAG packages, and nationwide packages).

<sup>15</sup> See *Competitive Bidding Second R&O*, 9 FCC Rcd at 2361 ("[I]n selecting auction methods the Commission must take into account the costs of implementation both for the Commission and potential bidders.").

of later apportioning package bids” in order to calculate small business, new entrant, or tribal bidding credits, as well as to determine any default or withdrawal payments.<sup>16</sup>

**B. Package Bidding Would Put Smaller Bidders at a Significant Disadvantage.**

Permitting any form of package bidding in Auction 96 would harm small and regional carriers, while benefitting only the largest carriers, because it would add increased risk and uncertainty for smaller bidders who lack the resources to hire game theorists to guide their auction participation. Package bidding also would increase the likelihood that large bidders will tie-up multiple licenses in large package bids, and thereby exclude smaller carriers with targeted business plans from acquiring the spectrum necessary to serve rural areas. Package bidding, therefore, would be contrary to the Commission’s goal of selecting bidding procedures “which ensure that the full range of qualified bidders have access to the process.”<sup>17</sup>

Further, package bidding could allow large bidders to obtain certain licenses – likely those most desired by small and regional carriers – at a discount because of the well-recognized “threshold problem,” which the Commission has described as:

[T]he difficulty that multiple bidders for the single licenses ... that constitute a larger package may have in outbidding a single bidder on the larger package, even though the multiple bidders may value the sum of the parts more than the single bidder values the whole. This may occur because bidders for parts of a larger package each have an incentive to hold back in the hope that a bidder for another part will increase its bid sufficiently for the bids on the pieces collectively to beat the bid on the larger package.<sup>18</sup>

---

<sup>16</sup> Notice at ¶ 77; *see id.* at ¶ 76 (explaining that, “when a bidder places an all-or-nothing bid on a package of licenses, there will be no identifiable bid amounts on the individual licenses that compose the package.”).

<sup>17</sup> *Competitive Bidding Second R&O*, 9 FCC Rcd at 2361.

<sup>18</sup> *Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003*, Public Notice, DA 03-1065, p. 4 (Apr. 3, 2003); *see* Goeree, J. K. and Holt, C. A., “Hierarchical Package Bidding: A Paper & Pencil Combinatorial Auction,” *Games and Economic Behavior* 70(1), 146-169, p. 22 (Sept. 2010) (“*Goeree/Holt Study*”) (“[P]ackage auctions can be complex and can result in coordination or ‘threshold’ problems for smaller bidders...”).

Since all individual bidders can be expected to reason this way, it is likely to be difficult to put together a coalition of bidders to raise their bids enough to beat a combinatorial bid for a larger package.<sup>19</sup>

In other words, unlike a license-by-license aggregation strategy, package bidding could force the Bureau to accept a package bid even though others may have placed higher bids, on a per-pop basis, for one or more of the licenses included in the package. This outcome is possible because, even if a smaller bidder assigns a higher value to a particular license, this valuation can be completely undercut by a national carrier able to include that license within a large package bid that includes urban areas. The result is that package bidding “bias[es] auction results in favor of the combination bid,”<sup>20</sup> disadvantaging all but the largest bidders and likely excluding smaller bidders from any meaningful auction participation.

The unfortunate irony is that, in attempting to deal with the possibility of “exposure” problems for large bidders, package bidding creates substantial exposure risks for small bidders because of its potential to reactivate dormant bids.<sup>21</sup> For example, a collection of small bidders who believed that they had been outbid on individual licenses by a package bid may find their “losing” bids active again if another losing bidder increases its bid by a margin that surpasses the package bid amount.<sup>22</sup> In this circumstance, an auction participant can find itself with the high bid on a license that it had given up many rounds earlier,<sup>23</sup> which creates obvious problems because bidders make decisions in each round based on the results of prior rounds.

---

<sup>19</sup> *Competitive Bidding Second R&O*, 9 FCC Rcd at 2366.

<sup>20</sup> *Id.* at 2365.

<sup>21</sup> See Notice at ¶ 21 (“When determining provisionally winning bids, the FCC Auction System would consider each bidder’s highest bid on each license or package placed up to that point in the auction, regardless of whether the bids were provisionally winning after the rounds in which they were placed.”).

<sup>22</sup> In contrast, “[i]n a non-package bidding auction, whether a bid on a license becomes provisionally winning depends only upon the bids submitted for that license.” *Id.* at ¶ 74.

<sup>23</sup> See *id.* at n. 49 (noting that a “bid that does not become a provisionally winning bid at the conclusion of the round in which it was placed may become a provisionally winning bid at the conclusion of a subsequent round.”).

The interaction of the bidding eligibility and package bidding rules also adds yet another layer of complexity to an auction. As the Bureau explains, the reactivation of “losing” bids “may occur even if the bidder does not have the bidding eligibility to cover the newly-provisionally winning bid, a situation that would not occur under the FCC’s usual SMR auction procedures.”<sup>24</sup> Particularly for smaller bidders without substantial auction resources, accurately determining the potential for a winning bid in an earlier round to again become a provisionally winning bid is nearly impossible because this “depends upon the bids submitted for that license, the bids submitted for the packages containing that license, and the bids submitted for other licenses in those packages.”<sup>25</sup> And, because “bidding eligibility will not be increased” when dormant provisionally winning bids are reactivated,<sup>26</sup> the practical effect of package bidding is to force bidders, including smaller bidders who may lack sufficient bidding eligibility, to commit funds (*i.e.*, eligibility) to both their dormant provisionally winning bids and any subsequent bids. This added complexity and potential to exceed bidding eligibility would only increase as the auction progresses because an increasing number of past bids potentially could again become active. It would also increase the time required to make informed bidding decisions, and, assuming the Bureau appropriately extends the time for each round, could substantially lengthen the auction.

For these reasons, package bidding would decrease auction participation by everyone but the largest carriers. In addition, as noted, package bidding could allow large carriers to acquire certain licenses at a discount, while likely paying approximately the same amount for densely-populated license areas as they would have if they had competed only with one another for these

---

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at ¶ 74.

<sup>26</sup> *Id.* at n. 49.

individual licenses. Accordingly, package bidding likely would reduce auction revenue, and thereby decrease funding for FirstNet, the planned public safety broadband network.<sup>27</sup>

Notably, the clear divide between those who support and oppose package bidding reveals that the industry broadly acknowledges that package bidding benefits the largest carriers while disadvantaging small and regional carriers. For instance, earlier this year in the Commission's incentive auction proceeding, every carrier which supported package bidding has a nationwide service footprint. In contrast, all other commenters addressing this issue strongly opposed the use of package bidding in the incentive auction.<sup>28</sup>

**C. While Package Bidding Would Significantly Disadvantage Smaller Bidders, the Hypothetical Advantage it Provides Nationwide Carriers is Unnecessary.**

There simply is no validity to the claim that the largest, already-dominant carriers require package bidding in order to attain sufficient economies of scale. In fact, the Commission already concluded with respect to the H Block that "EAs are large enough that large carriers can aggregate them up to larger license areas ... thus achieving economies of scale."<sup>29</sup> The Commission further concluded that EA-based licensing "will facilitate access by smaller carriers because EAs are small enough to provide spectrum access opportunities to such carriers."<sup>30</sup> But these smaller carriers will lack any reasonable opportunity to purchase individual EA-based

---

<sup>27</sup> See *H Block R&O*, 28 FCC Rcd at 9486 ("Sections 6401(c)(4) and 6413 of the Spectrum Act specify that the proceeds from an [H Block] auction ... shall be deposited in the Public Safety Trust Fund."); *id.* at 9607 (Statement of Commr. Rosenworcel) ("[T]he H Block is our best chance to provide significant funding for our first responders before we get started on another kind of auction – incentive auctions.").

<sup>28</sup> See, e.g., Comments of Competitive Carriers Association ("CCA"), Docket No. 12-268, p. 18 (Jan. 25, 2013) (package bidding "can bias the auction in favor of larger carriers with greater resources."); Comments of MetroPCS Communications, Inc. ("MetroPCS"), Docket No. 12-268, p. 13 (Jan. 25, 2013) ("[C]ombinatorial bidding substantially benefits the largest carriers over smaller competitive carriers and allows them to skew outcomes with superior purchasing power."); Comments of the Rural Telecommunications Group, Inc. ("RTG"), Docket No. 12-268, p. 9 (Jan. 25, 2013) (package bidding "would be helpful only to nationwide carriers" and "would fundamentally disadvantage small and mid-sized companies"); Comments of Leap Wireless International, Inc. and Cricket Communications, Inc., Docket No. 12-268, p. 9 (Jan. 25, 2013) ("[C]ombinatorial bidding procedures would create significant and unwarranted biases in favor of the largest bidders.").

<sup>29</sup> *H Block R&O*, 28 FCC Rcd at 9500-01.

<sup>30</sup> *Id.* at 9500.

licenses if the largest carriers can use package bids to monopolize the single paired spectrum block that will be offered in Auction 96. In other words, if the Bureau adopts package bidding procedures, it would seriously jeopardize the Commission’s goal “that licensing this band using EAs will facilitate access to spectrum for both small and large carriers.”<sup>31</sup>

The unique characteristics of Auction 96 also make package bidding unnecessary to reduce the “exposure problem” potentially faced by new entrants seeking to create a nationwide footprint.<sup>32</sup> Because the H Block likely “will operate as an extension of the PCS band,”<sup>33</sup> most interested bidders will be current PCS licensees whose bidding strategies will be focused on adding to their existing spectrum capacity or filling in their existing PCS service areas, which, as noted, can be accomplished through the purchase of individual EA licenses. As a result, there is no reason to subject smaller bidders to the bias and strategic burdens caused by package bidding.

This is particularly so because, while large carriers will have the opportunity to aggregate individual licenses, it is unlikely that small and regional carriers would ever gain access to H Block spectrum if package bidding allows large carriers to monopolize Auction 96. Although the Commission will permit H Block licenses to be partitioned, disaggregated or leased,<sup>34</sup> such divestitures have been, and likely will continue to be, the exception rather than the rule.<sup>35</sup> As a consequence, the theoretical availability of these secondary market transactions is unlikely to provide small and regional carriers with timely or adequate access to spectrum. The Bureau therefore must decline to implement package bidding in order to provide these carriers with a

---

<sup>31</sup> *Id.*

<sup>32</sup> *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, 15397 (2007) (“700 MHz Second R&O”).

<sup>33</sup> *H Block R&O*, 28 FCC Rcd at 9493.

<sup>34</sup> *See id.* at 9572-74.

<sup>35</sup> USCC has previously detailed why large carriers seldom, if ever, enter into secondary market transactions with small and regional carriers. *See* Comments of USCC, Docket No. 12-268, pp. 15-17 (Jan. 25, 2013).

reasonable opportunity to win licenses during Auction 96 rather than be forced to later rely on problematic secondary markets, and thus be dependent on large carrier cooperation.

**D. The Bureau’s HPB Proposal Would Not Adequately Address the Substantial Harms Package Bidding Inflicts Upon Smaller Bidders.**

Given the numerous adverse consequences detailed above that package bidding likely would cause, and given the lack of any demonstrated need for package bidding here, the Bureau should not implement any form of package bidding for Auction 96, including its proposed HPB methodology. As the Commission previously found, although “[l]imiting combinations to a small number would reduce complexity” to some extent, it would “require a determination of the most valuable packages prior to the auction.”<sup>36</sup> Unfortunately, “[t]here is no simple way to make such a determination,”<sup>37</sup> particularly for smaller bidders who lack the substantial resources of the few national carriers who alone typically support package bidding. The Commission further noted that, “if there is a wide diversity of desired license groupings, offering only a limited set will not accommodate all preferences and may not enhance efficiency.”<sup>38</sup> In other words, the claimed benefits of HPB would do little, if anything, to address the substantial harms package bidding inflicts upon smaller bidders, while potentially withholding some of the advantages that package bidding allegedly would otherwise provide to the largest carriers.<sup>39</sup>

Fully flexible package bidding procedures, which permit bidders to create tailor-made packages of individual licenses, in many ways are even more harmful than HPB to smaller bidders because of the added complexity and uncertainty involved. However, as compared to HPB, those procedures could make it more likely that smaller bidders would acquire individual

---

<sup>36</sup> *Competitive Bidding Second R&O*, 9 FCC Rcd at 2366.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> See *Goeree/Holt Study* at 17 (“[I]f the hierarchical pre-packaging completely mismatches bidders’ preferences, the resulting exposure problem that all bidders face would likely reduce bids and revenues.”).

licenses for the markets they intend to serve. Specifically, because flexible package bidding procedures allow large carriers to assemble packages that include only the densely-populated areas they typically focus on, those procedures make it more likely than with HPB that the more sparsely-populated license areas desired by smaller bidders are not included within any package bids. In contrast, because the Bureau's HPB proposal would include only predefined packages,<sup>40</sup> the packages would invariably include not only those license areas most sought after by large carriers, but also those areas that may not have otherwise been included in any package bids. This would be especially likely if the Bureau permits REAG or nationwide packages.

Moreover, because the HPB procedures would require that every package be of at least a certain size,<sup>41</sup> and thus likely include several urban areas, it would be even more difficult for the collective bids for individual licenses made by smaller bidders to exceed a bid for one of these large packages. Smaller bidders often focus exclusively on license areas that do not contain densely-populated metropolitan areas. Without bids by small and regional carriers for the most valuable licenses contained within a package, it would be nearly impossible for their collective bids to exceed the package bids. In other words, the collective total of all bids for individual licenses contained within a package likely would not even include the most valuable license(s) in that package, making it highly improbable, if not impossible, that the aggregate bids for individual licenses would exceed the package bids of the national carriers.

Conversely, in an auction without package bidding, large carriers would bid on individual licenses for densely-populated markets, and most likely assign the same value to these licenses as the valuations they otherwise would have used to develop their package bid amounts. Further, because it would be the same large bidders competing for these individual licenses that would

---

<sup>40</sup> See Notice at ¶ 17.

<sup>41</sup> See *id.*

have competed for packages containing these markets, the level of auction competition for these licenses would be unaffected. As a consequence, because smaller bidders likely would be willing to pay more for the less-populated markets than the values large bidders would have assigned to those markets as part of a package bid, overall auction revenue likely would increase.

The Bureau attempts to support its HPB proposal by differentiating Auction 73, which used a variant of HPB. However, while USCC agrees that Auction 73 involved “considerably different circumstances,”<sup>42</sup> those differences in fact make it even more inappropriate to adopt an HPB procedure here. Most notably, HPB in Auction 73 applied only to the 700 MHz C Block, not to the other spectrum blocks included in that auction. The Commission structured Auction 73 in this way to ensure that smaller bidders, who cannot reasonably compete with package bidders, nevertheless had “a wide array of opportunities.”<sup>43</sup> In doing so, the Commission explained that “[l]imiting package bidding to licenses for C Block spectrum w[ould] prevent package bidding from deterring participation by bidders,” and noted that “bidders seeking to aggregate multiple licenses in other blocks of 700 MHz Band spectrum w[ould] not be precluded from attempting to aggregate licenses in the absence of package bidding.”<sup>44</sup> In contrast, if the Bureau permits any form of package bidding here, every license will be subject to package bidding because Auction 96 will “include[] only a single block of licenses.”<sup>45</sup>

The results of Auction 73 further demonstrate why the Bureau should not adopt package bidding here. Not only did Verizon acquire spectrum – virtually the entire Upper C Block – which exceeded its eligibility limits, it did so at a significant discount compared to the other

---

<sup>42</sup> *Id.* at ¶ 19.

<sup>43</sup> *700 MHz Second R&O*, 22 FCC Rcd at 15397.

<sup>44</sup> *Id.*

<sup>45</sup> Notice at ¶ 19; *see 700 MHz Second R&O*, 22 FCC Rcd at 15397 (“[W]e do not conclude that we need auction all 700 MHz Band licenses in a manner that minimizes the exposure risk.”); *Goeree/Holt Study* at 17 (“We are not claiming that HPB will yield better performance in terms of efficiency and revenue in all environments.”).

paired commercial spectrum offered in Auction 73.<sup>46</sup> Specifically, Verizon purchased the Upper C Block, which was subject to package bidding, for \$0.76/MHz-pop, while the Lower A and B Blocks, which were not subject to package bidding, sold for \$1.16/MHz-pop and \$2.68/MHz-pop, respectively.<sup>47</sup>

**E. Package Bidding Would Violate the Commission’s Statutory Obligations.**

Permitting package bidding also could run afoul of the Commission’s statutory obligations. The complexity, uncertainty, strategic risks, and significantly reduced likelihood of success caused by package bidding would deter small and regional carriers from participating in Auction 96,<sup>48</sup> leading to a less competitive auction, lower auction revenues, and a high concentration of licenses amongst the few remaining bidders.<sup>49</sup> Moreover, package bidding would primarily disadvantage small and regional carriers, who typically are the only licensees willing to concentrate their build-out efforts in rural and other underserved areas.<sup>50</sup> Package bidding also would permit large carriers to obtain a package of licenses for a total sum lower than what individual licensees are willing to pay on a per-license basis.<sup>51</sup> Finally, the complexity of, as well as the minimal real-world experience with, package bidding likely would delay the completion of Auction 96, and thus the distribution of H Block licenses.<sup>52</sup>

---

<sup>46</sup> See Comments of MetroPCS, Docket No. 12-268, p. 14 (Jan. 25, 2013) (“[T]he combinatorial bidding process in Auction 73 appears to have played a major role in enabling Verizon to acquire the C Block at a substantially lower per-pop price than the other spectrum sold for.”).

<sup>47</sup> See Supplemental Comments of CCA Regarding 600 MHz Band Plan, Docket No. 12-268, p. 9 (June 14, 2013).

<sup>48</sup> See 47 U.S.C. §309(j)(4)(D) (FCC must “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”).

<sup>49</sup> See 47 U.S.C. §309(j)(3)(B) (FCC must “promot[e] economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women”).

<sup>50</sup> See 47 U.S.C. §309(j)(3)(D) (FCC must promote “efficient and intensive use of the electromagnetic spectrum”).

<sup>51</sup> See 47 U.S.C. §309(j)(3)(C) (FCC must avoid “unjust enrichment through the methods employed”).

<sup>52</sup> See 47 U.S.C. §309(j)(3)(A) (FCC must avoid “administrative or judicial delays”).

**F. Package Bidding Would Conflict with the Overwhelming Record in the H Block Rulemaking Proceeding.**

Although the Commission did not specifically seek comment regarding whether to permit package bidding for H Block licenses, commenters addressing this issue unanimously supported the Commission's "standard" SMR auction format without the use of any package bidding procedures. For instance, AT&T "support[ed] the adoption of a simultaneous multiple-round design for the H Block auction," noting that, "[f]or simplicity's sake, there is no need to depart from the Commission's standard auction format."<sup>53</sup> As AT&T explained, under such a design, which it called "a proven model of success," "every H Block license available for bid will be offered at the same time and bidders will place bids on individual licenses through successive bidding rounds."<sup>54</sup> Moreover, MetroPCS specifically urged the Commission to "avoid auction procedures, such as combinatorial bidding, which unduly complicate auctions and have proven to limit the ability of smaller bidders to acquire spectrum."<sup>55</sup>

In addition, because package bidding would make it far more difficult, if not impossible, for bidders to win individual licenses, HPB would frustrate the Commission's intent when it licensed the H Block on an EA basis, as well as conflict with the unanimous public support for H Block license areas no larger than EAs. For instance, the Commission found that "licensing the H Block on an EA basis w[ould] help [it] to meet several statutory goals, including providing for the efficient use of spectrum; encouraging deployment of wireless broadband services to consumers; and promoting investment in and rapid deployment of new technologies and

---

<sup>53</sup> Comments of AT&T Inc. at 11 (citing to *Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 92*, Public Notice, 26 FCC Rcd 3342, 3372 (2011) (referring to simultaneous multiple-round design as the standard auction format)).

<sup>54</sup> *Id.*; *see id.* ("The Commission and the industry have experience with simultaneous, multiple-round auctions and the Commission repeatedly has executed such auctions without significant problems.").

<sup>55</sup> Comments of MetroPCS at 5; *see* Reply Comments of Sprint at 17 ("Sprint and other commenters generally support the adoption of traditional competitive bidding rules for the auction of H Block.").

services.”<sup>56</sup> It therefore concluded that “licensing the spectrum on an EA basis best balances the Commission’s public interest goals of encouraging widespread geographic buildout (including in rural areas) and providing licensees with sufficient flexibility to scale their networks.”<sup>57</sup>

Similarly, MetroPCS noted that licensing the H Block on an EA basis would be “both appropriate for this spectrum and [] in the public interest,”<sup>58</sup> explaining that “EAs are small enough to allow larger carriers to satisfy their urban needs while at the same time allowing other carriers access to spectrum outside the major urban areas.”<sup>59</sup> Particularly relevant with regard to the Bureau’s HPB proposal, MetroPCS also noted that “EA licensing allows each license to be acquired by the bidder that most highly values the spectrum in that geography.”<sup>60</sup> Other commenters addressing the proper H Block service area likewise supported EA-based licensing, including Cellular South, who explained that EAs would best “balance the competing desires to maximize revenue and allow for efficient geographic aggregation of licenses...”<sup>61</sup> Commenters also emphasized the need for Auction 96 to ensure adequate opportunities for small and regional carriers to bid on licenses, which, as detailed above, would not occur if the Bureau adopts its HPB proposal. For instance, MetroPCS supported “competitive bidding rules designed to increase widespread participation in any H Block auction including by small, rural and mid-tier carriers and new entrants.”<sup>62</sup>

---

<sup>56</sup> *H Block R&O*, 28 FCC Rcd at 9500.

<sup>57</sup> *Id.* at 9501; *see id.* at 9500 (“[A]n EA-basis strikes the appropriate balance in license size for this band.”).

<sup>58</sup> Comments of MetroPCS at 9.

<sup>59</sup> *Id.* at 11.

<sup>60</sup> *Id.* at 12.

<sup>61</sup> Comments of Cellular South at 5; *see* Comments of CCA at 13 (“Using sufficiently small geographic areas will provide rural and regional carriers incentives to participate while still allowing carriers to aggregate blocks...”); Comments of Sprint at 9; Comments of T-Mobile USA, Inc. at 8; Comments of AT&T at 7.

<sup>62</sup> Comments of MetroPCS at 5; *see* Comments of CCA at 9 (urging the Commission to adopt “measures to prevent the nation’s dominant carriers from acquiring the lion’s share of the H Block spectrum”); Reply Comments of RTG

### III. THE BUREAU SHOULD NOT ADOPT ANONYMOUS BIDDING PROCEDURES

If the Bureau is seeking a robust auction that will maximize revenue and allow the H Block to be put to its highest and best use, it is imperative that auction participants have information regarding other bidders, their bid amounts, and their bidding eligibility. “Because of the advantages of providing more information to bidders and the difficulties involved in ensuring that bidder identities remain confidential,” the Commission has expressed its intent to “generally release the identities of bidders before each auction.”<sup>63</sup> USCC urges the Bureau to abide by this reasoning and not adopt anonymous, or “blind,” bidding procedures for Auction 96. This approach would be consistent with the Commission’s past practice in most spectrum auctions<sup>64</sup> and, as detailed below, would be particularly appropriate for Auction 96.

Providing Auction 96 participants with sufficient information regarding other bidders would facilitate awarding the licenses to those who value them the most.<sup>65</sup> This, in turn, would improve the efficiency of the license assignments because these bidders would be more likely to put the H Block to its highest and best use.<sup>66</sup> In contrast, blind bidding would make it difficult for bidders to form accurate and confident assessments of license values, preventing them from participating as effectively in Auction 96.<sup>67</sup> For instance, the Commission has found that

---

at 6 (“Continuing to hold spectrum auctions that result in the further concentration of spectrum is against the public interest as it violates Section 309(j) of the Communications Act and the Spectrum Act.”).

<sup>63</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Memorandum Opinion and Order, 9 FCC Rcd 7245, 7252 (1994) (“*Competitive Bidding Second MO&O*”).

<sup>64</sup> *See Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 66*, Public Notice, 21 FCC Rcd 4562, 4602 (2006) (“*Auction 66 April Notice*”) (“With a single early exception, the Commission has elected not to limit such information.”).

<sup>65</sup> *See Competitive Bidding Second MO&O*, 9 FCC Rcd at 7252 (“Revealing bidder identities may facilitate awarding licenses to those who value them most highly by providing more information to bidders.”).

<sup>66</sup> *See id.* (“More accurate valuation of licenses by bidders can thus improve the efficiency of license assignments.”)

<sup>67</sup> *See Auction 66 April Notice*, 21 FCC Rcd at 4603 (“[T]he information that has typically been provided during FCC auctions may be of value in helping bidders to form more accurate and confident assessments of license values, thus allowing them to participate more effectively in the auction.”); *Comment Sought on Reserve Prices or Minimum*

bidders' license valuations may "be highly dependent on knowing the identity of neighboring carriers, especially regional leaders and competitors..."<sup>68</sup> Forcing auction participants to attempt to independently discover this information not only is a waste of valuable resources for all bidders,<sup>69</sup> it uniquely disadvantages smaller bidders, who lack the extensive resources needed to discover other bidders' identities.<sup>70</sup> At the same time, fully transparent auctions benefit large carriers seeking to aggregate multiple licenses to create expansive service areas.<sup>71</sup>

Especially for smaller bidders, license valuations also depend on certain technical considerations – *e.g.*, the availability of interoperable devices and adequate roaming opportunities – that require sufficient information on the identities of likely other licensees.<sup>72</sup> In particular, smaller bidders need to know whether they will be sharing a spectrum band with one or more of the national carriers, who alone drive device development and own geographically-extensive networks. Absent this information, smaller bidders cannot know whether they will have timely access, if any, to cutting edge mobile devices, or whether such devices would be available at prices that benefit from the economies of scale made possible by the largest carriers. Nor can they know whether their consumer devices will be capable of roaming on the nationwide

---

*Opening Bids and Other Procedures*, Public Notice, 21 FCC Rcd 794, 799 (2006) (“*Auction 66 January Notice*”) (“[B]idders may bid more confidently if they know the bids of their potential competitors.”).

<sup>68</sup> *Competitive Bidding Second MO&O*, 9 FCC Rcd at 7252.

<sup>69</sup> See Cramton, Peter and Schwartz, Jesse A., “Collusive Bidding: Lessons from the FCC Spectrum Auctions,” *Journal of Regulatory Economics* 17, 229-252, p. 19 (May 2000) (“*Cramton/Schwartz Study*”) (noting that, with a transparent auction, “[b]idders do not waste resources trying to figure out who is who.”).

<sup>70</sup> See *Competitive Bidding Second MO&O*, 9 FCC Rcd at 7252 (“Concealing bidder identities may give an advantage to larger bidders that have the resources to devote to discovering other bidders’ identities.”).

<sup>71</sup> See *Cramton/Schwartz Study* at 26 (“This fully transparent design gives bidders a great deal of information, which ... promotes the efficient aggregation of complementary licenses.”); *id.* at 2 (“[A] bidder can observe the tentative prices on all of the licenses, and so knows which aggregations are the best value.”).

<sup>72</sup> See *Auction 66 January Notice*, 21 FCC Rcd at 799-800 (“[I]nformation on the identities of likely other licensees may provide useful technical information, such as ... the potential for negotiating roaming agreements...”); *Competitive Bidding Second MO&O*, 9 FCC Rcd at 7252 (“Bidders’ valuations of licenses may also be highly dependent on knowing ... the manner in which complementary licenses are likely to be used and the compatibility of standards both inside and outside their desired service areas.”).

networks of the largest carriers, the absence of which creates a severe competitive disadvantage for smaller carriers because they cannot offer potential customers with the same broad geographic coverage provided by the national carriers.

These opportunities are essential for a smaller carrier's network to be economically viable. Consequently, a lack of such information would create substantial risks for these bidders, likely reducing or eliminating their participation in Auction 96.<sup>73</sup> In contrast, the Commission has found that "publicly disclosing the identity of other bidders may encourage vigorous bidding for licenses."<sup>74</sup> A transparent Auction 96, therefore, would increase auction revenue, and thus funding for our nation's first responders.<sup>75</sup>

The disadvantages blind bidding creates for smaller bidders are compounded by the fact that these same bidders are those most likely to require outside financing in order to participate in a spectrum auction. In past Commission proceedings, financial institutions have stressed that the "most important reason for the Commission to abandon its 'blind bidding' proposal is that it will have a chilling effect on financial investors..."<sup>76</sup> As a matter of business practice, potential lenders want and need to know as much as possible in order to accurately gauge the level of risk involved.<sup>77</sup> For instance, the valuation decisions of the few market leaders significantly impact

---

<sup>73</sup> See *Cramton/Schwartz Study* at 15 ("Reporting bidder identities can induce higher auction revenues if a bidder's valuation for one license ... depends on who will be the winner of the other licenses...").

<sup>74</sup> *Competitive Bidding Second MO&O*, 9 FCC Rcd at 7252; see *Competitive Bidding Second R&O*, 9 FCC Rcd at 2375 ("Maximizing the information available to bidders minimizes bidder uncertainty and thus may increase bids by alleviating the winner's curse.").

<sup>75</sup> See *H Block R&O*, 28 FCC Rcd at 9486 ("[T]he H Block spectrum [will] be the first spectrum specified by the Spectrum Act to be licensed by auction, and thus likely will represent the first steps toward th[e] statutory goal" of funding FirstNet); *AWS-4 R&O*, 27 FCC Rcd at 16132 ("[I]n establishing rules that will enable the 1995-2000 MHz spectrum to be put to its highest and best use, we also further Congress's objectives related to the use of public safety broadband spectrum in the 700 MHz band.").

<sup>76</sup> Joint Comments of Columbia Capital LLC and MC Venture Partners, AU Docket No. 06-30, p. 6 (Feb. 14, 2006) ("Columbia/MC Joint Comments").

<sup>77</sup> See Joint Reply Comments of Madison Dearborn Partners, LLC and TA Associates, Inc., AU Docket No. 06-30, pp. 3-4 (Feb. 28, 2006) ("As financial institutions, MDP and TA have a bias in favor of receiving as much market

the perception of financial institutions regarding the value of particular spectrum, and thus the amount they are willing to loan smaller bidders.<sup>78</sup> The uncertainty caused by blind bidding regarding the availability of interoperable devices also would make it more difficult for smaller bidders to access sufficient capital. As CIT Group Inc. recently explained to the Commission, “[i]f there is any investor or lender concern as to the timely availability of technology necessary for the initiation of revenue service, that concern will have a detrimental effect on the availability of capital, with a commensurate impact on the financial success of the [] auction.”<sup>79</sup>

Particularly for smaller bidders, blind bidding also creates serious legal risks because it can conflict with SEC reporting obligations. Specifically, while the SEC requires companies to publicly disclose financially-material information, blind bidding expressly forbids the release of auction-related information, even if the information would be material to a company, and therefore fall within the SEC’s reporting requirements. As MetroPCS previously explained to the Commission, this “irreconcilable” tension between these federal requirements forces companies “to maneuver at great peril between two sets of diametrically opposed federal regulations – one which values disclosure above all else and one which values confidentiality above all else.”<sup>80</sup> Significantly, these risks are greater for smaller bidders because their auction activity is far more likely to be deemed “material” under the SEC’s disclosure requirements.<sup>81</sup>

---

information as they can before investing money in a license acquisition. ... In the absence of a solid basis for evaluations, financial investors will either withdraw or reduce the amount of their investments because they have been forced to factor in additional elements of uncertainty and risk.”)

<sup>78</sup> See Columbia/MC Joint Comments at 6 (“[A] bid by a major carrier with a history of building out its network and providing service to the public may provide stronger evidence of the appropriate value for a given license than a bid by an entity regarded in the industry as a speculator.”).

<sup>79</sup> Supplemental Comments of CIT Group Inc., Docket No. 12-268, p. 6 (June 14, 2013).

<sup>80</sup> Comments of MetroPCS Communications, Inc., AU Docket No. 08-46, p. 10 (Apr. 18, 2008).

<sup>81</sup> See *id.* (“For instance, the size of the upfront payment for a small or mid-size carrier could be material to the overall finances of the company and therefore reportable as part of a company’s public financial statements or other information included in their SEC disclosures.”). MetroPCS also noted that “in some instances SEC regulations

In recognition of this conflict, the Bureau has previously “strongly urge[d]” applicants to consult with the Commission before disclosing non-public auction information, even when “such a disclosure is required by law or regulation, including regulations issued by the Securities and Exchange Commission.”<sup>82</sup> Such consultations, however, cannot adequately address the risks faced by bidders in a blind auction. For instance, MetroPCS noted “that Commission staff will not and should not be giving legal advice to applicants with regard to their SEC reporting obligations, nor can the Commission staff absolve applicants from potential violations of SEC reporting requirements.”<sup>83</sup> Further, “even with respect to Commission reporting obligations, informal staff rulings do not have the force and effect of law and cannot shield an applicant from a third party challenge.”<sup>84</sup> The inherent conflict between these federal requirements therefore presents yet another reason why the Bureau should not adopt blind bidding procedures for Auction 96,<sup>85</sup> particularly in light of the substantial consequences smaller bidders could face as a result of simply complying with their SEC reporting obligations.<sup>86</sup>

---

could require a high bidder to list long-standing high bids as a ‘contingent liability’ on its financial statements, especially in the waning days of an auction when the likelihood that a bid will not win diminishes.” *Id.*

<sup>82</sup> *Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 78*, Public Notice, DA 08-1090, ¶ 166 (May 16, 2008) (original emphasis removed).

<sup>83</sup> Petition for Reconsideration of MetroPCS Communications, Inc., AU Docket No. 08-46, p. 15 (June 30, 2008).

<sup>84</sup> *Id.*

<sup>85</sup> Although the Bureau denied MetroPCS’s Petition for Reconsideration, that decision has no bearing here. After blind bidding procedures had already been adopted for Auction 78, MetroPCS proposed a safe harbor from the Commission’s anti-collusion rules to protect bidders with SEC reporting obligations. The Bureau’s reasons for denying MetroPCS’s proposal therefore do not affect USCC’s argument that the inherent conflict between these federal requirements strongly weighs against adopting blind bidding procedures in the first place, particularly in light of the marginal, if any, benefits that accrue from blind bidding, as USCC details below. See *MetroPCS Communications, Inc. Petition for Reconsideration of Public Notice Announcing Procedures for Auction of AWS-1 and Broadband PCS Licenses (Auction 78)*, Order on Reconsideration, 25 FCC Rcd 2209, 2217 (2010) (“[W]e conclude that the creation of a safe harbor for SEC disclosures could significantly undermine the purpose and the public interest benefits of limited information procedures.”).

<sup>86</sup> See *Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76*, Public Notice, DA 07-4171, ¶ 156 (Oct. 5, 2007) (“If an applicant is found to have violated the Commission’s rules or antitrust laws in connection with its participation in the competitive bidding process, the applicant may be subject to various sanctions, including forfeiture of its upfront payment, down payment, or full bid amount and prohibition from participating in future auctions.”).

While blind bidding gives rise to these various public interest harms, its advantages are largely theoretical and marginal, making it unnecessary. There have been no serious allegations of collusive bidding in recent auctions,<sup>87</sup> and, since the early auctions that were affected by collusion, the Commission and the Department of Justice have revised their standards and pursued enforcement actions. As a result, the Commission has found that “concealing bidders’ identities may not be critical to preventing collusion during an auction [because] existing antitrust laws and the FCC’s collusion rules should be adequate to prevent collusive conduct.”<sup>88</sup> In other words, because laws, rules and policies already exist to guard against collusion, the Commission possesses both the statutory incentives and regulatory tools necessary to create an open auction environment where information which has legitimate value to smaller bidders is not withheld. Moreover, publicly disclosing bidding information would in fact assist the Bureau with policing Auction 96 because it would be far more likely to learn of, and therefore be able to timely address, collusive behavior by being alerted to suspicious activity by other auction participants.<sup>89</sup> In contrast, when participants are denied bidding information, they are less likely to be able to identify and disclose suspicious bidding patterns.<sup>90</sup>

Full transparency is especially important if the Bureau permits any form of package bidding in Auction 96, which USCC strongly opposes. A blind auction would magnify the harms that package bidding inflicts upon smaller bidders because it would unfairly burden or foreclose the attempts of bidders for parts of a package from outbidding a provisionally winning

---

<sup>87</sup> Cf. *Cramton/Schwartz Study* at 26 (finding “that only a small fraction of the bidders frequently used collusive strategies,” and that, even then, “[t]hese bidders were only sometimes successful at keeping prices low.”).

<sup>88</sup> *Competitive Bidding Second MO&O*, 9 FCC Rcd at 7252.

<sup>89</sup> See *Cramton/Schwartz Study* at 2-3 (“Bidders and other interested parties can verify that the rules are followed. If problems exist, they are found and resolved before significant damage is done.”).

<sup>90</sup> See *700 MHz Second R&O*, 22 FCC Rcd at 15393 (“[S]ome types of signaling and coordinated bidding are very hard to detect in auction data, making it difficult to pursue enforcement actions after such alleged activity has occurred...”).

package bid. Bidders on individual licenses are precluded from coordinating their bids, yet their collective bids must be sufficient to defeat a package bid. This creates a unique interdependency in which possible bidders for parts of a package need to be able to observe the bidding behavior of similarly-situated bidders to avoid risky guesses about valuations and whether others will increase their bids for parts of a package. In other words, knowing which bidders have previously bid on parts of a package, the values they currently attach to comparable licenses, and the licenses for which they currently have provisionally winning bids could be decisive in deciding whether to increase a current bid for an individual license contained within a package.

Under anonymous bidding – *i.e.*, in circumstances where none of this information is available – the risks of foregoing other potentially promising bidding strategies for different licenses are simply too great because a bidder lacks adequate information to gauge whether continuing to bid for a part of a package is a viable strategy. The ultimate result is that anonymous bidding, when coupled with package bidding procedures, makes it even less likely that smaller bidders will overcome the threshold problem. For these reasons, the Bureau has in the past declined to limit the amount of information made available if the auction would include package bidding.<sup>91</sup> In fact, Auction 73 remains the only auction held with both package and blind bidding procedures. However, as noted, package bidding in Auction 73 applied only to the 700 MHz C Block, not to the other spectrum blocks included in that auction. Accordingly, it would be unprecedented for the Bureau to adopt package bidding for Auction 96, which would apply to every H Block license, while also implementing blind bidding procedures.

Notably, blind bidding is particularly unnecessary for Auction 96. For instance, assuming the Bureau establishes bidding procedures that sufficiently promote the opportunity for

---

<sup>91</sup> See *Auction 66 January Notice*, 21 FCC Rcd at 800 (“In the event that we decide to allocate the AWS-1 licenses between two auctions, one with package bidding, we propose to limit information only in the SMR auction without package bidding.”).

bidders of all sizes to participate, Auction 96 likely will be highly competitive.<sup>92</sup> The Commission has previously recognized that, “[a]ssuming other factors are consistent, a higher level of competition in the auction may reduce the potential for bidders to use bidding information in an anti-competitive manner.”<sup>93</sup> As a result, with regard to highly-competitive auctions, the Commission has concluded that “the benefits to bidders from making information available are likely to outweigh the potential harms from facilitating collusive behavior.”<sup>94</sup>

The fact that Auction 96 will offer licenses in only a single spectrum block also weighs against the use of blind bidding because the potential for “anti-competitive bidding behavior is greater when an auction offers multiple, substitutable blocks of licenses for sale...”<sup>95</sup> Further, Commission precedent demonstrates that full transparency would be appropriate here because the H Block likely will be used as a PCS extension band. For instance, the Commission based its decision to adopt blind bidding procedures for Auction 73 in part on the fact that the particular technologies that would be deployed in the 700 MHz band remained uncertain at that time.<sup>96</sup> Moreover, if the Bureau adopts its proposal not to permit bid withdrawals in Auction 96, this would further reduce the likelihood of anti-competitive bidding, thereby making blind bidding

---

<sup>92</sup> See *H Block R&O*, 28 FCC Rcd at 9607 (Statement of Commr. Rosenworcel) (describing the H Block as “prize spectrum”); *id.* at 9608 (Statement of Commr. Pai) (“[W]e take several steps to ensure that the auction to come will yield maximum revenue and that the H Block spectrum is put to its highest-valued use.”); *AWS-4 R&O*, 27 FCC Rcd at 16129 (“All four nationwide wireless providers have broadband PCS spectrum, as do regional and rural providers, and any of these providers could use additional PCS spectrum to expand capacity.”).

<sup>93</sup> *700 MHz Second R&O*, 22 FCC Rcd at 15390; see *Cramton/Schwartz Study* at 26 (“In [] spectrum auctions in which competition is expected to be strong, then a fully transparent process may be best...”).

<sup>94</sup> *Auction 66 April Notice*, 21 FCC Rcd at 4603; *id.* at 4601 (“If we determine that the auction is likely to be highly competitive... and therefore, that the risk of successful collusion is low, we will make available bidding information that we typically have made available in previous Commission auctions.”).

<sup>95</sup> *700 MHz Second R&O*, 22 FCC Rcd at 15393; see *Auction 66 January Notice*, 21 FCC Rcd at 799 (“[T]he potential for such anti-competitive bidding behavior is greater when an auction offers multiple, substitutable blocks of licenses for sale...”).

<sup>96</sup> See *700 MHz Second R&O*, 22 FCC Rcd at 15394 (“The potential benefit of knowing the identity of other parties ... appears likely to be less in this auction ... in light of the early stage of development with respect to new services in these frequencies.”).

even less beneficial.<sup>97</sup> In sum, because there would be few, if any, costs associated with a fully transparent Auction 96, the Bureau should follow Commission precedent and “provide bidders with information that may enhance their abilities to participate confidently and effectively in the auction.”<sup>98</sup>

However, if the Bureau has specific concerns regarding whether Auction 96 will be adequately competitive, it could gauge the likely level of competition using a pre-defined eligibility ratio, above which the auction would be deemed sufficiently competitive and thus subject to open bidding rules.<sup>99</sup> But USCC believes that establishing a fully transparent auction from the start would be by far the best course of action. Notably, Auction 73 was the only auction to offer initial mobile broadband licenses for a spectrum band where the Commission inflexibly imposed blind bidding procedures rather than base this decision on an eligibility ratio.<sup>100</sup> And, as noted, Auction 73 differed from Auction 96 in various ways.<sup>101</sup> The results of past auctions also demonstrate that the Bureau need not be concerned about the likely level of competition here, and thus can confidently establish an open auction at this time. Specifically, both previous auctions similar to Auction 96 – *i.e.*, offering initial mobile broadband licenses in a particular spectrum band – for which the Commission established an eligibility ratio to determine

---

<sup>97</sup> *Cramton/Schwartz Study* at 15 (explaining how “unlimited withdrawals may be used to facilitate collusion”).

<sup>98</sup> *Auction 66 April Notice*, 21 FCC Rcd at 4601.

<sup>99</sup> *See 700 MHz Second R&O*, 22 FCC Rcd at 15390 (“In prior auctions, the Commission has adopted anonymous bidding procedures and made final implementation of those procedures contingent on a pre-auction measure of the likely competitiveness of the auction.”).

<sup>100</sup> Although the Commission adopted blind bidding without the use of an eligibility ratio for Auctions 77, 78, 86 and 92, Auction 77 involved a single-round sealed-bid methodology, while the other three auctions included only licenses that had been offered, but not sold, in previous auctions, or that became available as a result of default, cancellation, or termination. Obviously, the level of competition in such auctions would be considerably less than in an auction, such as here, that opens up a valuable spectrum band for mobile broadband services for the first time.

<sup>101</sup> *See id.* at 15393 (“The potential for these types of anti-competitive bidding behavior is greater when an auction offers multiple, substitutable blocks of licenses...”); *id.* at 15394 (“The potential benefit of knowing the identity of other parties placing bids for particular licenses appears likely to be less in this auction than in past Commission auctions, in light of the early stage of development with respect to new services in these frequencies.”).

whether blind bidding would be used exceeded that ratio, and thus did not involve blind bidding.<sup>102</sup> Moreover, announcing upfront that an auction will be fully transparent, rather than relying on an eligibility ratio after short-form applications have been filed, provides information that could greatly influence the decision, particularly for smaller bidders, whether or not to participate in the first place. It also provides all bidders with additional time to prepare for an auction, something that could be especially important for smaller bidders who, as noted, often rely on outside financing.

If the Bureau nevertheless takes this approach rather than immediately adopt transparent bidding procedures for Auction 96, based on past auctions and given the serious disadvantages that information restrictions create for smaller bidders, it should avoid setting an unnecessarily high eligibility ratio. USCC specifically proposes an eligibility ratio of 2.5. In Auction 66, the pre-set eligibility ratio of 3.0 proved to be unnecessarily high.<sup>103</sup> Although Chairman Martin described Auction 66 as the “biggest, most successful wireless auction in the Commission’s history,”<sup>104</sup> the actual eligibility ratio exceeded the 3.0 threshold by only a small fraction.<sup>105</sup> The success of Auction 66 therefore demonstrates that the Commission was initially too conservative

---

<sup>102</sup> See *168 Bidders Qualified to Participate in Auction No. 66; Information Disclosure Procedures Announced*, Public Notice, 21 FCC Rcd 8585, 8585 (2006) (“*Auction 66 Disclosure Notice*”) (noting that, because the estimated level of competition exceeded the eligibility ratio, “the likely level of competition should be sufficient to make anti-competitive outcomes difficult to sustain and therefore the benefits of publicly revealing information on bidder interests and bidder identities likely would outweigh the potential harms.”); *Nine Bidders Qualified to Participate in Auction No. 69*, Public Notice, DA 07-123 (Jan. 23, 2007) (noting that the estimated level of competition exceeded the eligibility ratio). Although the Commission also established an eligibility ratio for Auction 71, which the estimated level of competition failed to meet, that auction is far different from Auctions 66, 69 or 96 because “[t]he spectrum to be auctioned ha[d] been offered previously in other auctions but was unsold and/or returned to the Commission as a result of license cancellation or termination,” which made it very unlikely that Auction 71 would be highly-competitive. See *Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 71*, Public Notice, DA 07-30, ¶ 7 (Jan. 16, 2007).

<sup>103</sup> See *Auction 66 April Notice*, 21 FCC Rcd at 4601.

<sup>104</sup> *Statement of Chairman Kevin J. Martin on the Conclusion of Advanced Wireless Services Auction*, News Release (Sept. 18, 1006) (“*Chairman Martin Statement*”).

<sup>105</sup> See *Auction 66 Disclosure Notice*, 21 FCC Rcd at 8585.

in setting an eligibility ratio of 3.0. The results of Auction 66 also demonstrate that blind bidding is not required for an auction to be highly successful and for a large number of smaller bidders to successfully compete.<sup>106</sup>

#### IV. CONCLUSION

Given the current lack of healthy competition in the wireless industry, the Bureau must ensure that bidders of all sizes have a reasonable opportunity for success in Auction 96.<sup>107</sup> As Cellular South explained in the H Block rulemaking proceeding, “[p]roperly structured competitive bidding can produce healthy competition by enabling smaller operators to expand and new entrants to introduce services that can temper the overwhelming consolidation of the current wireless market.”<sup>108</sup> The H Block’s unique characteristics would allow small and regional carriers to quickly and cost-effectively deploy networks in rural and other underserved areas.<sup>109</sup> But this obviously will not occur if these carriers are effectively shut out of Auction 96, which would be a real likelihood if the Bureau permits either package or blind bidding. As detailed above, package bidding could virtually eliminate the opportunity for smaller bidders to acquire licenses in Auction 96, while the information disparities created by blind bidding have a disproportionately adverse effect on smaller bidders. Absent additional spectrum being made available to small and regional carriers, there will be a continued lack of competition in the wireless industry and reduced network deployments in currently underserved areas. As a result,

---

<sup>106</sup> See *Chairman Martin Statement* (“[M]ore than half of the winning bidders were small businesses.”).

<sup>107</sup> See Comments of MetroPCS at 20 (“The Commission should strive to increase opportunities in the auction for a broad array of carriers...”); Comments of Cellular South at 10 (“In the context of today’s highly consolidated wireless industry, it is critical that the Commission adopt auction structures and service rules that will promote competition, rather than further consolidation.”).

<sup>108</sup> Comments of Cellular South at 3-4.

<sup>109</sup> See Comments of CCA at 9 (stressing that, because the “H Block spectrum has substantial value for mobile broadband applications,” the Commission should “adopt[] measures to prevent the nation’s dominant carriers from acquiring the lion’s share of the H Block spectrum...”).

