

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

In the Matter of)	
)	
Auction of Flexible-Use Service Licenses in)	AU Docket No. 20-429
the 2.5 GHz Band for Next-Generation)	
Wireless Services)	

**COMMENTS OF
NEW AMERICA’S OPEN TECHNOLOGY INSTITUTE AND
THE SCHOOLS, HEALTH & LIBRARIES BROADBAND (SHLB) COALITION**

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I. Introduction and Summary

New America’s Open Technology Institute and the Schools, Health & Libraries Broadband (SHLB) Coalition (“OTI and SHLB”) respectfully submit these comments in response to the Commission’s Further Public Notice seeking responses to the auction format choices the Commission is considering to assign licenses in the 2.5 GHz band.¹

The auction of licenses for unassigned portions of the 2.5 GHz band represents an important opportunity to make spectrum available to smaller local and regional ISPs in rural, Tribal, and other underserved areas that historically have been left behind. The largest national carriers generally dominate the Commission’s spectrum auctions absent aggressive, proactive measures aimed at leveling the playing field and promoting competitive entry. Having missed the opportunity to adopt a spectrum cap for this auction, as the Commission did with great success prior to the 3.45-3.55 GHz and CBRS auctions, the agency should at a minimum streamline this auction to allow parties to submit a single sealed bid that reflects what they believe a license is worth in relation to their own intended use. Both the Communications Act and President Biden’s July 2021 Executive Order on competition policy explicitly support rules that encourage rather than discourage a larger and more diverse number of bidders to participate and win.

The proposed ascending clock-1 auction format, while marginally better than the simultaneous multi-round (SMR) spectrum auction format designed to enable the business model of large national and regional mobile carriers, is still needlessly costly and complex. It is likely to discourage participation by small, rural and competitive providers. Even with the positive addition of a proxy bidding option, a format with multiple rounds tips the balance strongly in

¹ Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Further Comment Sought on Competitive Bidding Procedures for Auction 108 Public Notice, AU Docket No. 20-429, DA 22-10 (rel. Feb. 9, 2022) (“Public Notice”).

favor of the largest providers with the deepest pockets. This is aggravated by an enormous information asymmetry due to the Commission’s failure to require leasing transparency. The record reflects extensive support for a single-round auction format’s ability to better level the playing field among bidders, catalyze a diverse wireless marketplace, and improve the choice for reliable and affordable broadband.

A single-round bidding process would also provide an opportunity for educational institutions, or a consortium of educational institutions, to submit bids in the auction. Colleges, universities, and K-12 schools have a long history of involvement in the EBS marketplace, and many of these educational institutions still operate EBS-based networks today, as do some local governments and universities. A single-round option would lower the barrier for educational institutions—and other anchor institutions or local governments—to meaningfully participate in the EBS auction and help to close the homework gap in their communities.

II. The Commission’s Proposed Clock-1 Auction Represents an Imperfect Attempt to Facilitate Participation by Competitive Providers in Less Populated Areas

The Commission proposes an ascending clock auction, enhanced by a proxy bidding feature, as a potential ‘third way’ to achieve more widespread and diverse participation in the 2.5 GHz band auction.² While OTI and SHLB believe that the clock-1 format represents a marginal improvement that could benefit some non-national ISPs, we also believe it is very likely that a multiple-round clock auction with no cap whatsoever on holdings by a single entity across the current EBS and BRS bands is unlikely to offer either small, rural, and Tribal internet service providers (ISPs), or current EBS license holders, a meaningful opportunity to acquire new 2.5 GHz band licenses in any county that deep-pocketed mobile carriers are determined to win. The

² *Id.* at ¶¶ 4, 35.

unique characteristics of the 2.5 GHz band—and the fact that the available licenses are non-fungible—further complicate the ability of the clock auction format to effectively promoting competition.

Although the Commission seeks to adopt an auction format that is “familiar” to participants and that has a “manageable duration,”³ the proposed clock-1 auction is nevertheless a multiple-round auction that maintains the pitfalls of such a method for assigning spectrum in the mostly rural and less densely-populated areas available in this band. The Commission itself has outlined arguments against multiple-round auctions with respect to competition and market entry. OTI and SHLB urge the Commission to consider the implications of a multi-round format that the agency itself acknowledged in the *Initial Public Notice*:

A multiple-round auction will always give a bidder an opportunity to outbid its competitors, and given that the majority license-holder in this band is a nationwide service provider and is likely to be better funded than many other entities that are potentially interested in Auction 108, these other, smaller entities may feel as though they have little chance of winning when competing against the larger license-holder.⁴

The Commission received first-hand testimony from rural providers about the difficulties a multiple-round auction would pose for smaller providers and EBS licensees. As WISPA notes, its small company members would have “virtually no chance” bidding against a deep-pocketed national ISP such as T-Mobile or Verizon in large part due to a big carrier’s ability to “cost-average bids across multiple geographic areas.”⁵ Citing the Commission’s own arguments in its *Initial Public Notice*, WISPA notes that T-Mobile—like other larger entities—would be able to

³ *Id.* at ¶ 5.

⁴ Auction of Flexible-Use Service Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 108, AU Docket No. 20-429, 36 FCC Rcd 645 (2021), ¶ 36 (“Initial Public Notice”).

⁵ Comments of the Wireless Internet Service Providers, AU Docket No. 20-429 (May 3, 2021), at 8-9 (“Comments of WISPA”).

pay more for some licenses than its stand-alone valuation would otherwise justify because it would be able to leverage savings from other licenses that it wins at less than its valuation.”⁶

Aggravating the anti-competitive context in Auction 108 is the extreme information asymmetries due to T-Mobile’s extensive holdings of BRS licenses and its opaque leasing contracts with EBS licensees. The outsized information advantage that T-Mobile wields due to its current large holdings in the band magnifies its financial advantage, allowing it to dominate any auction that lacks a cap or other mechanism for small providers, schools or local governments to obtain even a modest block of spectrum in the combined EBS and BRS bands.

The Rural Wireless Association further highlights worries that “the lack of bid visibility that would be afforded participants in a multiple round format may disadvantage small and rural bidders, particularly if their desired license areas lack local, comparable spectrum valuation markers.”⁷ OTI and SHLB urge the Commission to acknowledge that due to the realities in this band, smaller providers and current EBS operators would be “deterred from participating in an auction where they expect that they would have little opportunity to win,” which in turn would offer the majority license-holding company an even stronger chokehold over the auction.⁸

The effective lack of access to 2.5 GHz band licenses will effectively limit the ability of competitive providers to gain access to spectrum to areas where the largest mobile carriers have no little incentive or interest. By increasing the rounds, costs, and burdens through a multiple-round auction format—and despite the innovations included in the clock-1 auction format—the Commission would provide T-Mobile the “opportunity to leverage their vastly superior financial resources to win licenses without the intention of constructing broadband networks in rural

⁶ *Id.*; *Initial Public Notice* at ¶ 36.

⁷ Comments of the Rural Wireless Association, AU Docket No. 20-429 (May 3, 2021), at 6.

⁸ *Initial Public Notice* at ¶ 36.

markets expeditiously, or in some cases only performing minimal construction shortly in advance of substantial service deadlines,” as Select Spectrum argues.⁹ Select Spectrum made this point about SMR specifically, but the likely lengthy duration of a clock auction and the tricks of larger carriers to switch bids to average costs and dominate coverage renders it applicable. As a result of the harms to competitive providers in sparsely populated areas, consumers in these areas will continue to suffer the harms of the digital divide.

In the *Initial Public Notice* the Commission itself acknowledged reasons that a clock auction format may not be “appropriate” for the 2.5 GHz band.¹⁰ As the Commission noted then, “each overlay license being offered is unique” and each block within a county has “a different amount of bandwidth... and even where a given frequency block is available in a county, white space may not be available throughout the county due to existing incumbent licensee operations.”¹¹ The auction, the spectrum, and the interested parties have not fundamentally changed in the past year. A multiple-round 2.5 GHz band auction would dampen broader participation in the proceedings and perpetuate the difficulties competitive providers face improving broadband in rural and Tribal areas.

III. The Commission Should Adopt a Single Round Format to Promote Competition

The rules for auctions determine the outcome when it comes to wireless competition. The Commission has declined to adopt a spectrum cap for the 2.5 GHz band auction despite the clear success of an auction-specific cap in both last year’s 3.45 GHz band auction and in the 2020 auction for Citizens Broadband Radio Service (CBRS) licenses. Because the “clock-1” format

⁹ Comments of Select Spectrum AU Docket No. 20-429 (May 3, 2021), at 2-3.

¹⁰ *Initial Public Notice* ¶ 35.

¹¹ *Ibid.*

described in the *Public Notice* will be at best marginally better at enabling small and rural ISPs to participate and win spectrum in a band where a national mobile carrier already maintains a dominant position across the EBS and BRS bands, the Commission can best facilitate more bidders and more competition by adopting a single-round, sealed-bid format. A single-round format is more likely to encourage smaller and competitive providers to participate and to result in a larger and more diverse number of winning bidders in rural, Tribal, and other underserved areas to help bridge the digital divide and opportunity gap. A single round format will also give current EBS licensees, schools and local governments a meaningful opportunity to bid and win.

A single-round format auction would shift the power dynamic to a more balanced equilibrium. As the Commission recognized in its *Initial Public Notice*, “in a single-round, pay-as-bid auction, the weak bidder has a better opportunity to win, it is more likely to participate in the auction, and prices can therefore be expected to be closer to the winning bidder’s valuation.”¹² That final point is also very important when it comes to EBS “white space” that is almost entirely outside the top 50 metro markets—typically less profitable areas that are more dependent on local ISPs for both fixed and mobile broadband service. A local WISP knows the incremental value of the additional coverage and/or capacity that a particular 2.5 GHz license will enable. This is particularly true where the license will only be useful in a less-populated portion of a county. Since the Section 309(j) of the Communications Act compels the Commission to design auctions to enhance competition and prohibits it from seeking to maximize revenue, the value that local WISPs and smaller mobile operators place on a license should have a chance to prevail.

¹² *Id.* at ¶ 36.

OTI and SHLB agree with DISH that a single-round auction “is more likely to produce a competitive auction [and] will better enable regional providers and new entrants to participate” by reducing the disadvantages experienced by smaller providers while simultaneously restricting the timeframe from becoming “overly burdensome.”¹³ As Voqal stated, a single “complex” SMR characteristic—such as the maintenance of bidding unit eligibility via continued bidding activity—would “rule Voqal out as a participant” due to a lack of “expertise to manage such a requirement....Voqal does not plan to organize its bids as an economic theorist might.”¹⁴

A single-round bidding process could also provide an opportunity for educational institutions, or a consortium of educational institutions, to submit bids in the auction. Colleges, universities, and K-12 schools have a long history of involvement in the EBS marketplace, and many of these educational institutions still operate EBS-based networks today. Even though the Commission eliminated the preference for educational access a couple of years ago, these educational institutions may value the licenses more than a commercial provider because of their public interest mission to connect unserved households with affordable service, thereby solving the homework gap in their communities. A single-round option would lower the barrier for educational institutions—and other anchor institutions for that matter—to meaningfully participate in the EBS auction.

A prime example of this potential is the collaboration between Imperial Valley Communications Authority (IVTA) and Imperial County’s Office of Education (ICOE) to utilize EBS spectrum to provide free broadband to students and the surrounding community. Imperial County is a rural and mostly low-income area on California’s border with Mexico. The network, called Borderlink, is a partnership between 34 community anchor institutions—16 of which are

¹³ Reply Comments of DISH, AU Docket No. 20-429 (May 27, 2021) at 2, 4.

¹⁴ Reply Comments of Voqal, AU Docket No. 20-429 (May 27, 2021) at 2.

school districts—that combine their collective fiber assets and EBS licenses to connect 120 different sites and provide a robust wireless LTE network for the large county. This LTE network, operated on 100 megahertz using five EBS licenses, boasts a download speed of 30 Mbps and upload speeds which average around 5 Mbps. The network has roughly 4,500 connections and an estimated average of 2,000 active on the network at any moment.

The ability to leverage EBS licenses has brought tangible benefits to Imperial County and its students during the COVID-19 pandemic. Thanks to the presence of this network, schools had the ability to deploy devices to students with haste and expand the network exponentially after schools closed due to the virus in March. The network experienced a tenfold increase in the number of connections the following fall for all-remote sessions at about one-third of the cost schools would generally have incurred for private ISP services.¹⁵ The Borderlink network demonstrates the importance of the Commission adopting pro-competitive auction rules—such as single-round—to support the efforts of schools and school consortiums to expand access to their students and communities.

WISPA similarly notes concern that the “vast majority” of its members, which are small and local broadband providers, would find a single-round format much easier to understand since they have “never participated in a Commission spectrum auction before” and therefore “lack experience with spectrum auctions and the resources to hire consultants.”¹⁶ The record reflects a remarkable consensus between large and small providers for a single-round format for the 2.5 GHz band auction. AT&T also cites the “unique circumstances” of the spectrum and the licenses

¹⁵ OTI Interview with Luis Wong, Chief Executive Officer, Imperial County Office of Education (Aug. 19, 2021).

¹⁶ Ex Parte Letter of the Wireless Internet Service Providers Association, AU Docket No. 20-429 (Oct. 6, 2021), at 2.

up for sale as a reason for adopting a single-round auction.¹⁷ OTI and SHLB agree with AT&T that “with a single-bid auction, other bidders would have a far better chance of winning spectrum licenses against T-Mobile, which would encourage participation and competition in the auction.”¹⁸ At the same time, we acknowledge that AT&T has its own incentives and we therefore underscore that we support a single-round format not to select a winner *between* the largest companies, but to instead open the playing field to *all* stakeholders.

Finally, several developments have materialized over the past year since the *Initial Public Notice* that demonstrate the need for the Commission to be proactive in designing a competitive auction that promotes widespread and diverse participation. First, the Commission has been directed specifically by the White House to ensure that spectrum auctions improve competition in the wireless market. President Biden’s Executive Order on promoting competition directs the Commission to implement procedures for spectrum auctions under “rules that are designed to help avoid excessive concentration of spectrum license holdings in the United States, so as to prevent spectrum stockpiling, warehousing of spectrum by licensees, or the creation of barriers to entry, and to improve the conditions of competition in industries that depend upon radio spectrum...”¹⁹ As the Executive Order acknowledges, the rules of the road for auctions play a direct role in the extent to which the largest providers are able to perpetuate their dominance and concentration.

Second, the Commission’s experience in mid-band spectrum auctions over the past year demonstrates the importance of the rules of spectrum auctions in determining who wins licenses and the diversity in size and scope of the recipient companies. The C-Band auction, while

¹⁷ Reply Comments of AT&T, AU Docket No. 20-429 (May 27, 2021) at 1.

¹⁸ *Id.* at 3.

¹⁹ See Executive Order No. 14036, “Promoting Competition in the American Economy,” 86 FR 36987 (Jul. 9, 2021).

successful, resulted in putting more than 90 percent of the licenses for the 280 megahertz of spectrum auctioned in the hands of the three largest nationwide carriers. The predominance of the AT&T, Verizon, and T-Mobile in the auction was effectively a pre-ordained outcome of the auction design: the simultaneous multi-round format, the lack of any spectrum cap, and the large license areas (PEAs) combined to diminish the ability of smaller providers' to win licenses.²⁰ The 3.45 GHz auction led to a more diverse set of bidders and winners as a result of the Commission's 40 megahertz cap, but the license areas were again overly large and the auction's SMR format led to very few licenses being bid on or won by WISPs or other local providers.²¹ Absent aggressive, proactive steps to reorient the rules towards a more diverse set of bidders, this auction will fail to bring about the participation from competitive providers needed to catalyze deployment in areas the largest providers have historically ignored.

To promote competition in the wireless broadband space—and to facilitate more and better broadband offerings in underserved rural and tribal communities—the Commission should adopt a single-round format for the 2.5 GHz band auction to promote uptake from rural, Tribal, and other competitive providers that have previously been shut out of spectrum auctions conducted through multiple rounds. Given the widespread acknowledgement from DISH, NACEPF/Mobile Beacon, and WISPA of the importance of a single-round format to promote participation from smaller providers given the specific characteristics of the 2.5 GHz band

²⁰ Kelly Hill, “Verizon dominated the C Band auction, spending \$45.45 billion for 3,500 licenses,” *RCR Wireless* (Feb. 25, 2021) <https://www.rcrwireless.com/20210225/5g/verizon-dominated-the-c-band-auction>.

²¹ Public Notice, Auction of Flexible-Use Service Licenses in the 3.45–3.55 GHz Band Closes Winning Bidders Announced for Auction 110, AU Docket No. 21-62 (Jan. 14, 2022).

spectrum licenses and the non-fungibility in particular, the Commission should pursue the procedure to boost competition in line with the White House Executive Order.²²

IV. Conclusion

The 2.5 GHz band represents a crucial opportunity to expand access to mid-band spectrum nationwide to support high-speed wireless broadband service to improve competition and affordability. The rules that the Commission adopts for the format of the auction are crucial to ensuring that smaller providers and educational institutions are able to compete with the largest companies for spectrum licenses they can use to bring service to their communities. To secure the goals of improving competition and expanding access to high-speed broadband, the Commission should implement a single-round bidding format instead of the proposed multiple-round clock auction.

Respectfully submitted,

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²² Reply Comments of DISH at 3-4; Comments of the North American Catholic Educational Programming Foundation, Inc. (NACEPF) and Mobile Beacon, AU Docket No. 20-429 (May 3, 2021) at 7; Comments of WISPA at 7 (“Unlike other spectrum auctions in which the spectrum bands offered are identical and incumbents are cleared from the band, bidders for 2.5 GHz spectrum are expected to encounter widely differing circumstances.”).