



March 11, 2014

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: EX PARTE PRESENTATION

GN Docket No. 12-268: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*

GN Docket No. 13-185: *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*

Dear Ms. Dortch,

Recently, representatives from Competitive Carriers Association ("CCA"), NTCA – The Rural Broadband Association ("NTCA") and the Rural Wireless Association, Inc. ("RWA"), as well as the law firm Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP ("Blooston Rural Carriers")¹ (among others), met with Commission staff to discuss the geographic area license size for use in the 600 MHz auction.² At this meeting, CCA, NTCA, RWA and the Blooston Rural Carriers each reiterated their continued support for the use of Cellular Market

¹ The Blooston Rural Carriers have previously been identified in the record of these proceedings. *See, e.g.*, Comments of the Blooston Rural Carriers, GN Docket Nos. 12-268, 13-185 at 12 (filed Jan. 9, 2014).

² *See Ex Parte* Letter from John Leibovitz, Deputy Bureau Chief, Wireless Telecommunications Bureau, FCC to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 12-268, 13-185 (filed Mar. 4, 2014).

Areas (“CMAs”) as the appropriate geographic license size for spectrum offered in upcoming auctions, including 600 MHz spectrum.

In an effort to address some of the concerns raised by the Commission with auctioning off 600 MHz spectrum based on CMAs, however, CCA, NTCA and RWA each discussed potential compromise proposals at the meeting to help realize some of the benefits that would flow from “right-sizing” spectrum licenses.³ Specifically, CCA reviewed with the Commission its previously submitted Partial Economic Areas (“PEAs”) proposal, which began with a heat map of population densities throughout the United States, and then divided the 176 Economic Areas (“EAs”) into PEAs based on urban and rural population disbursements. Following additional feedback from its carrier members, CCA revised its PEA proposal to a total of 397 PEAs as of the filing of its Reply Comments. During the meeting NTCA and RWA also discussed their proposal to create PEAs by laying the 734 CMA boundaries over EA boundaries,⁴ and dividing the CMAs up so that each one nests within an EA. As explained by NTCA and RWA, this process yielded a total of 1,118 geographic units.⁵ NTCA and RWA aggregated some of those geographic units together into approximately 500 territories.

Building on the direction given by the Commission at the end of the meeting to continue working together to create consensus on this issue, CCA, NTCA, RWA and the Blooston Rural Carriers began work to (1) synthesize the CCA’s PEA framework with the NTCA and RWA proposal; (2) further reduce the number of territories to an amount approaching 400 areas; and (3) continue following the cardinal rules of making each “building block” territory nest within an EA, while maintaining existing CMA boundaries to the maximum extent possible.

To that end, and without prejudice to their continued support for CMAs, CCA, NTCA, RWA and the Blooston Rural Carriers jointly submit the enclosed map and associated county list as a compromise PEA proposal for use in the incentive auction—which divides the United States and its territories into 416 PEAs. The attached map and data represent a compromise solution offered on behalf of our broad and diverse constituencies, who together represent the vast majority of the wireless industry.

Although licensing spectrum based on the areas contained in this joint proposal will not promote opportunities for smaller carriers to the same extent as CMAs, these PEAs will ensure that some licenses consist of large population centers while others consist of less populous areas. The goal of this proposal is to attract a variety of bidders, including carriers that would be

³ See William Lehr and J. Armand Musey, “Right-sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction,” (“Lehr/Musey Study”), attached to *Ex Parte* Letter from Steven K. Berry, Competitive Carriers Association, to The Hon. Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268 (filed Nov. 20, 2013).

⁴ These are the EA boundaries as proposed by the Bureau of Economic Analysis of the U.S. Department of Commerce in 1995.

⁵ See *Ex Parte* Letter from John Leibovitz, Deputy Bureau Chief, Wireless Telecommunications Bureau, FCC to Marlene H. Dortch, Secretary, FCC, RWA-NTCA Attachment, GN Docket Nos. 12-268, 13-185 (filed Mar. 4, 2014).

foreclosed from bidding on entire EAs. In authorizing the 600 MHz incentive auction, Congress directed the Commission to “consider assigning licenses that cover geographic areas of a variety of different sizes.”⁶ In his extension of remarks, House Energy & Commerce Committee Chairman Fred Upton explained that through “offering a variety of geographic licenses and license sizes, the FCC can help ensure all potential bidders – local, national, and regional; urban and rural – have an opportunity to obtain spectrum to address the exponential increase in demand for spectrum caused by the increased use of smartphones and tablets by U.S. customers.”⁷ The Commission also has an obligation under the Communications Act (as amended) to promote the rapid deployment of technology, products and services to the public, “including to those residing in rural areas”⁸ and to avoid the excessive concentration of licenses by disseminating licenses to a variety of applicants, including specifically, small businesses and rural telephone companies.⁹

Creating opportunities for all potential bidders to participate in the auction in furtherance of these statutory directives requires sufficiently small building blocks that are smaller than EAs, such as PEAs. Moreover, these PEAs will not establish a wholly new geographic licensing scheme, as they respect existing CMA boundaries to the greatest extent possible, and they “nest” within existing EAs.¹⁰ Licensing spectrum based on PEAs thus would entail some of the benefits of smaller geographic licenses, including promoting participation by a broader array of carriers, while employing geographic units that are capable of nesting into larger EAs.

In submitting this consensus proposal, CCA, NTCA, RWA and the Blooston Rural Carriers emphasize two important points. **First**, this proposal is offered as a solution to the unique concerns raised by the first-of-its-kind incentive auction for 600 MHz spectrum. These issues do not arise, and therefore do not need to be solved, in the context of other spectrum auctions (most notably, the upcoming AWS-3 auction). **Second**, CCA, NTCA, RWA and the Blooston Rural Carriers believe the record in this proceeding demonstrates the pervasive harms that would flow from the Commission’s adoption of any sort of package bidding component for use in either the incentive auction or the AWS-3 auction—regardless of geographic license size.¹¹ There is near unanimity in the record against package bidding, with only the two largest carriers supporting its use. The Commission should therefore implement this compromise proposal in the incentive auction without reference to a particular package bidding proposal or scheme.

In short, while CCA, NTCA, RWA and the Blooston Rural Carriers each continue to believe that CMAs represent the most efficient and pro-competitive license size for spectrum

⁶ See Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, 126 Stat. 156 § 6403(c)(3) (Feb. 22, 2012).

⁷ 158 Cong. Rec. E237-39 (statement of Rep. Fred Upton).

⁸ 47 C.F.R. § 309(j)(3)(A).

⁹ 47 C.F.R. § 309(j)(3)(B).

¹⁰ Lehr/Musey Study at 9.

¹¹ Though the larger the geographic license size ultimately used, the more harmful package bidding will be to competitive wireless carriers.

auctions, any alternative should harness the benefits of small license sizes to the maximum extent possible. Accordingly, if the Commission declines to use CMAs in the broadcast incentive auction, using the boundaries jointly proposed by the undersigned would be far preferable to an approach based on EAs alone. This joint proposal reflects a cooperative approach to a complex issue, now endorsed by a broad representation of the wireless industry.

Pursuant to Section 1.1206 of the Commission's Rules, this *ex parte* presentation is being filed electronically with the Office of the Secretary.

Sincerely,

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