



April 16, 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,

Competitive Carriers Association ("CCA"), NTCA – The Rural Broadband Association ("NTCA"), the Rural Wireless Association, Inc. ("RWA"), and the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP ("Blooston Rural Carriers")¹ (together "PEA Coalition" or "Coalition") filed on March 11, 2014 a joint geographic license area proposal ("Joint Proposal") for use in the upcoming 600 MHz auction that divides the United States and its territories into 416 Partial Economic Areas ("PEAs").² On March 20, 2014, Verizon filed in

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 C. Sean Spivey, Assistant General Counsel, Competitive Carriers Association; Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association; Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc.; and John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens,

response an incomplete proposal to utilize Office of Management and Budget (“OMB”) 2013 Metropolitan Statistical Area data to license a significant portion of the country into 216 areas (which Verizon also refers to as PEAs)—though Verizon’s proposal does not contain license areas for the remaining, rural portions of the country (for which Verizon apparently has no interest).³ The purpose of this *ex parte* is to provide Commission staff with a description of the Coalition’s methodology in crafting the Joint Proposal. We continue to urge the Commission to adopt the Coalition’s Joint Proposal to provide all wireless carriers the opportunity to participate in the 600 MHz auction, and satisfy its statutory obligations under Section 309(j).⁴

Throughout this proceeding, CCA, NTCA and RWA have worked to present the Commission with options for geographic license sizes that would maximize (rather than foreclose) competitive carrier participation in the incentive auction. In so doing, these parties have attempted to be mindful of the Commission’s desire that (1) the number of licenses offered not raise reverse and/or forward auction implementation risks, and (2) that the base license area be able to “nest” within a larger license area, such as Economic Areas (“EAs”).⁵ On November 27, 2013, CCA submitted its first partial economic area proposal, dividing the United States into 351 areas.⁶ CCA subsequently amended its proposal on December 23, 2013 (increasing the number of areas to 390),⁷ and further refined its proposal through its reply comments in response to the Bureau’s Public Notice seeking comment on the proposal (increasing the number further to 397).⁸ Each of these iterations of CCA’s proposal accommodated the two guiding principles set out above.

Duffy & Prendergast, LLP to Marlene H. Dortch, Secretary, FCC (filed Mar. 11, 2014) (*March 11 Joint Ex Parte*); *see also Ex Parte* Letter from C. Sean Spivey, Assistant General Counsel, Competitive Carriers Association; Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association; Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc.; and John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP to Marlene H. Dortch, Secretary, FCC (Mar. 20, 2014) (*March 20 Joint Ex Parte*).

³ *See Ex Parte* Letter from Tamara Preiss, Vice President – Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC (Mar. 20, 2014) (*Verizon Ex Parte*); *see also Ex Parte* Letter from Tamara Preiss, Vice President – Federal Regulatory Affairs, Verizon, to Marlene Dortch, Secretary, FCC (Mar. 25, 2014).

⁴ *See* 47 U.S.C. §§ 309(j).

⁵ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12411 ¶¶ 147, 48 (2012).

⁶ *See Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, CCA to Marlene H. Dortch, Secretary, FCC (Nov. 27, 2013) (*CCA Ex Parte*).

⁷ *See Ex Parte* Letter from C. Sean Spivey, Assistant General Counsel, CCA to Marlene H. Dortch, Secretary, FCC (Dec. 23, 2013).

⁸ Supplemental Reply Comments of Competitive Carriers Association Regarding the Use of “Partial Economic Areas,” GN Docket Nos. 12-268, 13-185 (filed Jan. 23, 2014).

On February 25, 2014, wireless industry stakeholders met with Commission staff to discuss the geographic area license size for use in the 600 MHz auction.⁹ At this meeting, RWA and NTCA distributed a working draft of a partial economic area map for stakeholders to review. Similar to CCA's previous proposals, this draft created base license areas that nest within EAs, and also reduced the number of territories down from the 734 Cellular Market Areas ("CMAs") advocated for by RWA and NTCA (as well as CCA), to account for incentive auction complexities.¹⁰ The RWA/NTCA proposal also sought to create additional, smaller license territories west of the Mississippi River, in response to concerns raised by their members.¹¹ At the end of this meeting, Commission staff thanked the parties for working together, and encouraged them to continue to do so in order to further alleviate auction implementation complexities.¹²

The Coalition formed and produced the Joint Proposal in response to this Commission directive. Like the various proposals that preceded it, the Coalition's Joint Proposal is based on Rural Service Area ("RSA"), Metropolitan Statistical Area ("MSA") and EA boundaries as adopted by the Commission.¹³ The Coalition used the 305 MSAs as PEAs starting points, since all but three MSAs nest within EA borders.¹⁴ To allow for additional license areas west of the Mississippi River, most contiguous MSAs were combined to form PEAs. Similarly, contiguous RSAs (with borders altered to accommodate nesting within EA borders) were combined to form PEAs. To further reduce the number of licensed territories, some RSAs contiguous to MSAs were also combined. In particular, RSAs immediately adjacent to the most densely populated clusters of MSAs in the country (for example, near Los Angeles, Miami, and throughout the Northeast Corridor) were combined into single PEAs. Meanwhile, additional PEAs were created in EAs west of the Mississippi River, with particular attention being paid to parts of Texas, Montana, Idaho, Washington, Oregon and Alaska. A significant number of additional PEAs were the result of previously un-split EAs being divided into two PEAs.

⁹ See *Ex Parte* Letter from John Leibovitz, Deputy Bureau Chief, Wireless Telecommunications Bureau, FCC to Marlene H. Dortch, Secretary, FCC (filed Mar. 4, 2014) (*Stakeholder Meeting Ex Parte*).

¹⁰ *Id.* at 2; RWA-NTCA Aggregated PEA Proposal, attached to *Stakeholder Meeting Ex Parte*.

¹¹ See, e.g., Comments of The Rural Wireless Association, Inc. and NTCA – The Rural Broadband Association, GN Docket Nos. 12-268, 13-185 at i (filed Jan. 9, 2014).

¹² *Id.* at 3.

¹³ See *CCA Ex Parte* (stating that the proposed PEA boundaries were "consistent with the CMA licenses that were employed in numerous previous auctions" and were "capable of nesting into larger EAs"); see also *March 11 Joint Ex Parte* at 2.

¹⁴ Richard Marsden, Dr. Chantale LaCasse, and Jonathan Pike, *Local and Regional Licensing for the US 600 MHz Band (Incentive Auction)*, GN Docket Nos. 12-268, 13-185 (Jan. 2014). These MSAs include: #48 in Ohio / Michigan, which straddles the border of EA 56 and EA 57; #78 in Michigan, which straddles the border of EA 57 and EA 62; and #156 in Maine / New Hampshire, which straddles the border of EA 2 and EA 3.

After these steps, the Coalition reviewed both the map and the population data to limit the number of PEAs that either (1) had a population base of less than 15,000 people, or (2) were “donut holes” of small territory within another PEA. Those that could be combined were consolidated into other contiguous PEAs.¹⁵

Once an initial draft map was complete, the Coalition consulted with its members/clients to determine: (1) where PEAs could be consolidated to further reduce the number of license areas; and (2) what changes may be necessary to accommodate geographically difficult-to-serve areas. Rural service providers have unique knowledge of the geography, service impediments and markets specific of their localities, all of which helped further shape the map. This review was in furtherance of Section 309(j)’s requirement that the Commission, in designing competitive bidding methodologies, seek to promote the rapid deployment of technology, products and services for the benefit of “those residing in rural areas” and avoid the excessive concentration of licenses by disseminating licenses to a variety of applicants, including specifically, small businesses and rural telephone companies.¹⁶

In light of these consultations, the Coalition’s Joint Proposal balances several competing interests: (1) preserving opportunities for small and rural carriers to participate in the 600 MHz auction; (2) keeping the total number of license territories to approximately 400; and (3) facilitating license territories that nest within EA boundaries.¹⁷

¹⁵ Of the 416 PEAs contained in the Joint Proposal, only four have a population of less than 15,000 based on 2010 U.S. Census Bureau population data. This materially addresses at least one concern that Verizon has subsequently raised against the Coalition’s Joint Proposal. *See Verizon Ex Parte* at 3.

¹⁶ *See* 47 U.S.C. §§ 309(j)(3)(A)-(B).

¹⁷ The formation by the Commission of new geographic licensing areas is not without precedent, and the Commission’s past procedure resembles the Coalition’s methodology. Specifically, the Commission formed new geographic service areas when it established RSAs. In the 1980s, the Commission issued cellular construction permits in two phases. The first phase of permits were issued based on MSAs, and only after MSA construction permits were issued did the Commission issue permits for non-MSA areas. These non-MSA areas were not geographically defined. Rather, they were established by the Applicant’s Cellular Geographic Service Area (“CGSA”), provided the CGSA was no larger than 2,000 square miles. However, the FCC determined it was in the public interest to establish defined boundaries for non-MSA areas, which it called RSAs. The make-up of the RSAs were based on a plan submitted by United TeleSpectrum, Inc. (“United”), which formed the RSAs by grouping together contiguous counties into 401 license areas based on county boundaries. After adopting United’s plan, the Commission addressed requests to modify the 401 boundaries using the following criteria: (1) ensuring the RSA followed county boundaries; (2) RSAs that included non-contiguous counties were separated into their own RSAs; (3) unopposed modification requests were granted if they were justified; and (4) a modification request was denied if economics or demographics showed the modification would not be in the public interest. *See, Amendment of the Commission’s Rules Concerning Rural Cellular Service*, CC Docket No. 85-388; RM 5167, Report and Order, published July 28, 1986, 51 FR 26895; *see also Amendment of the Commission’s Rules for Rural Cellular Radio Service*, Order on Reconsideration, 2 FCC Rcd 3366 (rel. June 8, 1987).

As noted above, Verizon recently filed an *ex parte* letter containing its own geographic license area proposal for urban areas and criticizing the Coalition's Joint Proposal.¹⁸ Verizon contends that the urban PEAs should be based upon 2013 OMB MSA boundaries,¹⁹ rather than the MSA boundaries that make up 305 of the 734 CMAs that have been adopted by the Commission and used in previous auctions.²⁰ Additionally, Verizon expresses concern with the methodology used by the Coalition to develop its PEA map.²¹ As set forth above, the Coalition's construction of the Joint Proposal was pursuant to a logical process that incorporated objective criteria and is based on the Commission's current CMA (and therefore MSA) boundaries—which are objective and have served as the basis for most of the wireless licenses that have been awarded to date.²² Verizon's other protestations are unfounded. As opposed to Verizon's proposal, the Coalition's PEA proposal is a more inclusive one which accomplishes the mandate of Section 309(j) while allowing the nationwide carriers to bid with zeal on licenses for any territory they feel is needed to supplement their current substantial spectrum holdings.

The Coalition appreciates the tremendous amount of time and effort the Commission and its staff have dedicated to preparing for the 600 MHz auction and, in particular, to the important issues surrounding geographic license areas. The Coalition stands ready to assist the Commission in this endeavor.

¹⁸ See *Verizon Ex Parte*.

¹⁹ See *Revised Delineations of Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and Guidance on Uses of the Delineations of These Areas*, Office of Management and Budget Bulletin No. 13-01, at 3 (Feb. 28, 2013) <http://www.whitehouse.gov/sites/default/files/omb/bulletins/2013/b13-01.pdf> (*OMB Bulletin*).

²⁰ See *Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties*, CL Report No. CL-92-40, 7 FCC Rcd 742 (1992).

²¹ *Verizon Ex Parte*. For example, Verizon cites the cities of Kenosha and Racine, Wisconsin as evidence that the Coalition did not use “objective criteria underlying the construction of some PEAs.” *Id.* at 2, n. 8. The Joint Proposal includes separate PEAs for both Kenosha and Racine because both cities have their own individual MSAs, and those individual MSAs were the Coalition's PEA starting points because they nested almost entirely within EA borders.

²² Verizon's claim that the Joint Proposal splits “more than 80 MSAs . . . into two or more PEAs,” including the Atlanta, Chicago, Cedar Rapids, and Iowa City MSAs, is based on Verizon's presumptuous use of revised OMB data. *Verizon Ex Parte* at 2, n. 7. As they are currently defined by the Commission, however, the Joint Proposal splits only the three MSAs with territory that cross an EA border, and does so to comply with the guiding principle that all PEAs nest within EAs (a principle with which Verizon agrees). The Joint Proposal in fact maintains the county compositions of the Atlanta and Chicago MSAs, and *combines* the Cedar Rapids and Iowa City MSAs into a single PEA.

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,

/s/ Rebecca Murphy Thompson

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