



May 2, 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*

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”) submits this ex parte presentation in response to the April 29, 2014 ex parte letter submitted by Verizon in the above-referenced proceeding (“Verizon Supplemental Ex Parte”). As discussed below, the Verizon Supplemental Ex Parte proposes arbitrary but significant changes to the consensus map submitted by the Coalition. 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, in furtherance of its statutory obligations under Section 309(j).

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).

On March 11, 2014, the Coalition filed 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 The Joint Proposal is the result of a specific methodology that balances several competing Commission interests, and utilizes license areas previously vetted by the Commission to the maximum extent possible.³ On April 29, 2014, Verizon filed its Supplemental Ex Parte letter in the Incentive Auction docket (GN Docket No. 12-268) expressing its continued support for Economic Area (“EA”) licensing in the 600 MHz band, but at the same time proposing that the FCC expand (in some cases quite significantly) certain PEAs—contingent upon the Commission’s allowing for package bidding in the auction.⁴

The PEA Coalition respectfully urges the Commission to reject Verizon’s proposed modifications to their Joint Proposal. First, the use of 2013 Office of Management and Budget (“OMB”) modifications to the MSA data to modify twenty PEAs that Verizon has characterized as “top markets” amounts to “cherry picking” by Verizon and would be inconsistent with the methodology used by the Coalition as described in their *April 16 Joint Ex Parte*.⁵ While some of the markets identified by Verizon are indeed top ten or twenty markets (e.g., New York, Chicago, Dallas, Houston), others are more generously described as mid-size markets (Pittsburgh, PA, Cincinnati, OH). And others could not be described as a “top” market by any conceivable metric (Green Bay, WI, and PEA346, which includes Champaign and Decatur, IL). Verizon provides no explanation for the arbitrariness of its suggested revisions. Moreover, adding counties to these twenty markets as proposed by Verizon will have a negative impact on thirty-seven (37) PEAs that will lose core counties that are often significant population centers. Rural and regional carriers that are incumbent service providers in these areas will likely find themselves unable to obtain 600 MHz spectrum to supplement their existing services if

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, Duffy & Prendergast, LLP to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (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, GN Docket No. 12-268 (filed Mar. 20, 2014) (*March 20 Joint Ex Parte*).

³ See *Ex Parte* Letter from Rebecca Murphy Thompson, 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 (filed Apr. 16, 2014) (*April 16 Joint Ex Parte*).

⁴ See *Ex Parte* Letter from Tamara L. Preiss, Vice President – Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 at 1 (filed April 29, 2014).

⁵ See generally *April 16 Joint Ex Parte*.

Verizon's proposed modifications are accepted, thereby hampering their ability to compete. Verizon's April 29th *ex parte* letter fails to account for this harm. For example, Verizon's proposed expansion of PEA 282 (Atlanta) would remove eight (8) counties and almost 407,000 POPs from PEA 283. The residual PEA 283 market would consist of three (3) Georgia counties that are not contiguous (Talbot Co., Troup Co. and Upson Co.), and just over 101,000 POPs.⁶ Other markets that Verizon proposes to expand are markets specifically identified by the Coalition members as areas where rural carriers would be precluded from participation under Verizon's initial proposal, such as Washington, DC and Dallas.⁷

In noting these examples, the Coalition is not suggesting that Verizon should go back and pick and choose counties to include or leave out of its modification proposal. Rather, the Commission should recognize that use of OMB's 2013 MSA data as the basis for modifying any of the Joint Proposal PEA markets would result in 600 MHz service areas that are illogical and have little in common with the Rural Service Areas ("RSAs"), Metropolitan Statistical Areas ("MSAs") and EA boundaries that have been used as the basis for licensing many wireless services, and which correspond to areas where rural and regional carriers currently conduct their operations and offer services to the public. In short, Verizon's proposed use of 2013 MSA data would create inefficiencies and complicate 600 MHz band licensing for the vast majority of bidders and competitive carriers that are not themselves nationwide carriers.

Second, Verizon's alternative proposal comes far too late in the process, as the Commission plans to vote on rules for the incentive auction in less than two weeks at the May 15 Open meeting.⁸ The Coalition has spent several months working within established guidelines to reach a consensus license proposal that would be inclusive rather than exclusive. Throughout this proceeding, CCA, NTCA, RWA and the Blooston Rural Carriers have worked hard to present the Commission with options for geographic license sizes that would maximize (rather than foreclose) competitive carrier participation in the incentive auction. 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) facilitating license territories that nest within EA boundaries; (3) respecting existing CMA boundaries to the maximum extent possible; and (4) keeping the total number of license territories to approximately 400. Verizon's changes, if adopted, would impact surrounding PEAs (as well as the demographics of the remaining PEAs) in a cascading waterfall of additional modifications and reconfigurations. This will be a time-

⁶ Though not reflected in its proposed county list, Verizon noted in its letter that it "does not object" to leaving Meriwether County in PEA 283 to ensure the license area is comprised of contiguous counties.

⁷ See *Ex Parte* Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association to Marlene H. Dortch, Secretary, FCC (filed Apr. 11, 2014); See *Ex Parte* Letter from Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc. to Marlene H. Dortch, Secretary, FCC (filed Apr. 11, 2014).

⁸ See News Release, "FCC Announces Tentative Agenda for May Open Meeting", released April 24, 2014 ("The Commission will consider a Report and Order that adopts key policies and rules for the broadcast television spectrum incentive auction, laying the groundwork for an unprecedented, market-driven process for repurposing spectrum for mobile broadband use, and promoting competition and innovation.")

consuming process that could jeopardize the Commission's timetable for putting incentive auction rules in place—a result no one is in favor of.

The Coalition urges the Commission to adopt their Joint Proposal without modifications, to provide all wireless carriers the opportunity to participate in the 600 MHz auction in furtherance of its statutory obligations under Section 309(j).⁹ In this regard, the Coalition reiterates its position that allowing large carriers to submit package bids on PEA licenses will foreclose opportunities for rural and regional carriers to obtain the licenses they need, and reduce the competitiveness of the Incentive Auction. The Commission should ensure that bidders of all sizes have an opportunity to participate in the Incentive Auction, and not adopt bidding procedures that advantage a privileged few.

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.

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/ C. Sean Spivey

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⁹ See 47 U.S.C. §§ 309(j).