

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

In the Matter of	)	
	)	
Promoting Investment in the 3660-3700 MHz Band	)	GN Docket No. 17-258
	)	

**REPLY COMMENTS OF  
NTCA-THE RURAL BROADBAND ASSOCIATION**



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**I. INTRODUCTION AND SUMMARY**

NTCA–The Rural Broadband Association (“NTCA”)<sup>1</sup> hereby submits these Reply Comments in response to the Federal Communications Commission’s (the “Commission’s”) request for comment on proposed changes to the rules governing Priority Access Licenses (“PALs”) that will be issued in the 3550-3700 MHz Band (“3.5 GHz Band” or “CBRS spectrum”) and the Rulemaking’s Initial Regulatory Flexibility Analysis.<sup>2</sup>

In its initial comments, NTCA proposed a modest change to the current 3.5 GHz Band licensing rules to accommodate a wide range of potential users, striking a balance that would promote the most effective and efficient use of the spectrum band. NTCA’s proposal that the Commission license two (2) PALs according to census tracts and five (5) PALs by counties is

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<sup>1</sup> NTCA represents approximately 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All NTCA service provider members are full service rural local exchange carriers and broadband providers, and many provide fixed and mobile wireless, video, satellite and other competitive services in rural America as well.

<sup>2</sup> *Promoting Investment in the 3550-3700 MHz Band*, GN Docket No. 17-258, Notice of Proposed Rulemaking (Rel. Oct. 24, 2017) (“Notice”).

supported by the record<sup>3</sup> and offers a middle ground that will accommodate large and small licensees alike, help ensure the deployment of service in rural and unserved areas, and satisfy the statutory directives of Section 309(j) of the Communications Act (the “Act”).

There is much public opposition to the notion of licensing the spectrum at issue according to Partial Economic Areas (“PEAs”). Among the more than 200 comments filed, only the few large mobile wireless providers and their proponents support increasing the geographic license territories from their current census tract basis to PEAs. Nearly all other commenters support maintaining census tract size licenses or at most, migrating to larger county-sized licenses. As stated, “PEA-based licenses would cause prices to soar at auction and would effectively foreclose many small and rural providers – particularly new entrants – from the PAL auction process.”<sup>4</sup>

## **II. SECTION 309(j) REQUIRES AN AUCTION DESIGN THAT ENSURES SMALL BUSINESS AND RURAL CARRIER PARTICIPATION IN THE AUCTION AND PROVISION OF SERVICE.**

In the Notice, the Commission seeks comment on whether PEA-based licenses would “effectively balance the objectives set forth in section 309(j) of the Act.”<sup>5</sup> In its comments, Verizon cites to just a portion of Section 309(j) to support PEA-sized license territories.<sup>6</sup> But the statute compels the Commission to adopt safeguards to protect the public interest in the use of the spectrum and to promote the purposes of the Act – which include making radio

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<sup>3</sup> Licensing the 3.5 GHz PAL spectrum according to two census tract size licenses and five county sized licenses was also put forth as a proposal by the Blooston Rural Carriers and jointly by the National Rural Telecommunications Cooperative and the National Rural Electric Cooperative Association.

<sup>4</sup> Comments of Rural Wireless Association, p. 3.

<sup>5</sup> Notice at ¶ 24.

<sup>6</sup> Comments of Verizon, pp. 10-13.

communication service available “to *all* the people of the United States,”<sup>7</sup> and not just those in the areas the large providers deem worthy of serving. Section 309(j) articulates numerous other objectives not cited by Verizon, including:

(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public *including those residing in rural areas*, without administrative or judicial delays; and

(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people *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>8</sup>

In Section 309(j)(4) of the Act, Congress further mandated that the Commission:

(B) include performance requirements such as appropriate deadlines and penalties for performance failures, *to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees*, and to promote investment in and rapid deployment of new technologies and services; [and]

(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, *prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small business, rural telephone companies*, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services.<sup>9</sup>

Even taking at face value Verizon’s dubious and unsubstantiated claims that PEA size licenses are necessary to promote use of the spectrum, investment, or economic opportunity, and atop all of the arguments already made in this proceeding refuting such

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<sup>7</sup> 47 U.S.C. §151 (emphasis added).

<sup>8</sup> 47 U.S.C. §§309(j)(3) (A)(B) (emphasis added). The Supreme Court, in its *Adarand* and subsequent *VMI* decisions, struck down preferential treatment of minorities and women. *See Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227-30 (1995) and *United States v. Virginia*, 518 U.S. 515, 531034 (1996).

<sup>9</sup> 47 U.S.C. §§ 309(j)(3)(B)(C) (emphasis added).

claims, the Commission simply may not, consistent with any legitimate and/or good faith reading or interpretation of the statute, license the spectrum in a manner that all but ensures that only the largest, most well-financed providers will have access to it. Any regulations for the award of new licenses through competitive bidding must expressly account for and seek to achieve *all* the 309(j) objectives, not just a select few.

More specifically, increasing the size of the license area to PEAs will correspondingly increase the cost of the licenses to the point of unaffordability for smaller operators in many areas<sup>10</sup> and is directly contrary to the business plans of many that are interested in the spectrum (including many that had already commenced planning based upon the previously approved census tract availability).<sup>11</sup> Only large providers have the resources to bid on large geographic areas and the ability to monetize the spectrum via a larger buildout. PEA-sized license territories will preclude small businesses from participating in the provision of spectrum-based services using this band.

Furthermore, from a public interest perspective, large license territories do not promote the provision of spectrum based services to rural consumers, in particular. Large companies with the resources to bid on large areas have a poor record of performance in deploying in rural areas, understandably focusing instead on the more profitable highly populated portions of license areas. As the Commission is aware and was pointed out in the comments of the Rural Wireless

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<sup>10</sup> See, e.g., Comments of Frontier, Communications Corporation, Winestream Services, LLC and Consolidated Communications, Inc.; Mission Valley Communications, LLC; Fire2Wire; Medianet Wireless; Peoples Telephone Cooperative, Inc.; Dynamic Spectrum Alliance; Cyber Broadband Inc.; Google LLC.

<sup>11</sup> See, e.g., Comments of Southern Linc, Fire2Wire, Dynamic Spectrum Alliance, Paladin Wireless LLC, ZipLink Systems LLC, Union Pacific, Sacred Wind Communications Inc, Joint Comments of the Telecommunications Subcommittee of the American Petroleum Institute and the Regulatory and Technology Committee of the Energy Telecommunications and Electrical Association.

Association (“RWA”),<sup>12</sup> T-Mobile and AT&T recently had to seek extensions and waivers of the Commission’s 700 MHz rules to avoid accelerated license term expiration for failing to meet construction benchmarks in rural areas, even though partitioning and disaggregation were available tools and despite the fact that other rural carriers were willing to acquire and build out any returned 700 MHz spectrum that would have become available as a result of enforcement of the performance requirement.

Large carriers are likely to use the spectrum at issue to relieve mobile congestion and enhance capacity where needed and enhance services in profitable areas, consistent with past practice. Conversely, small businesses are seeking inexpensive spectrum to provide niche services and to discrete populations. NTCA’s members, for example, are looking at the spectrum as a means of enhancing or supplementing broadband service to their rural communities, both in unserved markets served by larger operators and in their own incumbent markets where the economics of deploying other fixed services are challenging. As Vantage Point Solutions, a provider of consulting and engineering services to a sizeable number of the rural, independent telecommunications providers in the U.S. (including many NTCA members) points out, “rural providers are targeting PALs for overbuilding their existing network footprints with higher-performance spectrum/technology, and/or for expanding them. Smaller provider service areas typically are significantly smaller than PEAs, which predominantly include multiple counties and cover populations of tens of thousands. . . . PEA sized license territories would require a buildout on a scale significantly larger than smaller, rural entities can manage

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<sup>12</sup> See Comments of Rural Wireless Association, p. 9.

operationally or financially, thus precluding their competitive, entrepreneurial and innovative use of the spectrum, and foreclosing the intent of the Act.”<sup>13</sup>

### **III. SECONDARY MARKETS ARE NOT A RELIABLE SOURCE OF SPECTRUM FOR RURAL CARRIERS**

The large providers argue that allowing partitioning and disaggregation for PEA-sized license territory will support a wide variety of deployments and mitigate concerns that larger licensing areas will result in inefficient spectrum use.<sup>14</sup> While NTCA supports rules that permit the partitioning and disaggregation of county sized licenses, history bears witness to the fact that the Commission cannot rely on winners of large geographic areas to provide rural carriers or other small businesses with access to unused spectrum through secondary market arrangements.

Indeed, the secondary market has proven to be only an effective tool for large operators to *consolidate* spectrum; it is hardly an effective method for small and rural operators to acquire spectrum. As a report prepared in 2014 for the 600 MHz Incentive Auction explained, “there are many examples of large operators acquiring spectrum from smaller players. . . [but] little recent history of the larger carriers leasing, disaggregating or partitioning large sections of spectrum where they already have service.”<sup>15</sup> Secondary markets are neither a reliable source of spectrum nor a solution to the lack of coverage in rural areas.<sup>16</sup> The Wireless Internet Service Providers

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<sup>13</sup> Comments of Vantage Point Solutions, pp. 2-3.

<sup>14</sup> See, Comments of AT&T, T-Mobile, Verizon, T-Mobile USA.

<sup>15</sup> Richard Marsden, Dr. Chantale LaCasse, and Jonathan Pike, *Local and Regional Licensing for the US 600 MHz Band* (January 2014), listing dozens of recent transactions in which large providers obtained spectrum from small providers. See also, *Mobile Future, FCC Spectrum Auctions and Secondary Market Policies: An Assessment of the Distribution of Spectrum Resources Under the Spectrum Screen* (Nov. 2013), available at <http://mobilefuture.org/wp-content/uploads/2013/11/Paper-Distribution-of-Spectrum-Resources.pdf>.

<sup>16</sup> See generally, Federal Communications Commission, *Connecting America: The National Broadband Plan* (2010), noting, “While the FCC currently has rules that enable secondary markets the record is mixed” and that some public comments provide “that unused or



Association (“WISPA”) reported that about 25 percent of its survey respondents indicated that they had attempted to obtain licensed spectrum from AT&T, Verizon, Sprint or T-Mobile, and fewer than ten percent of those respondents reported being successful.<sup>17</sup> Relying on small and rural carrier access to spectrum via the secondary market assumes without justification or evidence that such a market will develop and is a foolish leap of faith that license holders are willing to part with spectrum at reasonable prices.

#### **IV. THE RECORD SUPPORTS A MIX OF CENSUS TRACT AND COUNTY SIZED LICENSES**

To the extent that there are good reasons to alter the current licensing scheme for CBRS, NTCA urges the Commission to fulfill its mandates under Section 309(j) through modified rules that still permit a variety of uses and accommodate a variety of users. Specifically, NTCA encourages the Commission to license the CBRS spectrum according to a mix of counties and census tracts. Retaining some spectrum licensed according to census tracts would preserve plans already in place to leverage the spectrum for innovative uses, while also creating larger license areas that better fit the business plans of other licensees, including large wireless providers. More specifically, as a compromise that can accommodate many different providers while adhering more faithfully to Section 309(j), NTCA recommends licensing two (2) PAL spectrum blocks according to the current census tract plan and five (5) blocks by counties.<sup>18</sup> Given the industry’s and the Commission’s recent experience in the context of complex auctions, there

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underutilized spectrum is not being made available to smaller providers, especially in rural areas where spectrum goes unused.”

<sup>17</sup> Comments of the Wireless Internet Service Providers Association. p. 43.

<sup>18</sup> See also, Comments of Blooston Rural Carriers, Joint Comments of National Telecommunications Cooperative and National Rural Electric Cooperative Association.

should be confidence that all would overcome any challenges related to the number of licenses being auctioned.

Dozens of commenters reported on their current operations or plans that require census tract license territories. For example, Rapid Systems described how it has invested close to one million dollars in hardware and labor in reliance on the rules adopted, and millions of dollars more on WiMAX 3650 gear. Its access to 3.5 GHz spectrum enabled the firm to respond quickly in restoring service after Hurricane Irma.<sup>19</sup> Utilities Technology Council pointed out that census tract license areas allow utilities access to spectrum to meet their needs.<sup>20</sup> General Electric similarly explained that census-tract licensing is critically important to the company and its industrial and critical-infrastructure customers.<sup>21</sup>

Retaining two license blocks for census tracts will preserve the ability of new entrepreneurs and niche businesses to obtain spectrum. It will spur quick deployment with low capital expense in very localized areas. Retaining at least some spectrum according to census tracts would also permit those who have begun deploying based on the rules adopted in the very recent past to move forward quickly with minimal disruption.

Meanwhile, county-sized licenses would accommodate a variety of business models. Bidders with geographic build out plans could target spectrum according to their needs without concerns of losing spectrum in a strategic census tract. Rural providers would have the ability to obtain spectrum in just the rural areas they intend to serve and nothing would preclude a larger provider from aggregating county licenses for a larger business plan. Counties “nest” into larger geographic service areas and operators would have the ability to secure licenses that correspond

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<sup>19</sup> Comments of Rapid Systems, p. 1.

<sup>20</sup> Comments of Utilities Technology Council, p. 4.

<sup>21</sup> *See, ex parte* of General Electric (filed January 24, 2018).

to their current footprints. NCTA – The Internet and Television Association believes that counties strike the right balance between incenting investment and enabling market access by new entrants.<sup>22</sup> NCTA supports a modest increase in PAL size to “reduce the administrative burden on the Commission and on network operators and to incent investment by operators seeking to deploy in a larger footprint.”<sup>23</sup> In the Spectrum Frontiers proceeding, the Commission adopted county-based licensing for Upper Microwave Flexible Use Service licenses in the 28 GHz band, concluding that “a county-based license affords a licensee the flexibility to develop localized services, allows for targeted deployments based on market forces and customer demand, and facilitates access by both smaller and larger carriers.”<sup>24</sup>

Larger geographic license territories drive small businesses out of spectrum auctions, whereas nothing beyond inconvenience perhaps prevents larger providers from participating in the auction and aggregating PALs to suit their needs. A combination of census tracts and counties therefore makes sense as a balance between operators, large and small.

## **V. A LONGER LICENSE TERM MAY BE APPROPRIATE FOR SOME LICENSES**

Recognizing that significant investment and time to obtain siting may be necessary to deploy the spectrum, NTCA can see the wisdom of, and could support, a slightly longer license term for licenses that are auctioned according to counties.<sup>25</sup> In its initial comments, NTCA suggested the Commission structure the county PAL license term in five-year increments, such

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<sup>22</sup> See also, Comments of Comcast.

<sup>23</sup> Comments of NCTA – the Internet and Television Association, pp. 3-4.

<sup>24</sup> *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et. al.* GN Docket No. 14-177, *et. al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, ¶ 35 (“Spectrum Frontiers Proceeding”).

<sup>25</sup> NTCA supports retaining the current license term and renewal expectation for licenses auctioned according to census tracts.

that an auction winner could expect to hold a license for a total of ten years. The Blooston Rural Carriers put forth a similar proposal<sup>26</sup> and the Rural Wireless Association supports extending the license term to five years for county-sized PALs.<sup>27</sup> While the large providers advocate a 10-year license term with a renewal expectancy, there is concern 10-year licenses will result in spectrum lying fallow in rural areas and deprive small and rural providers of access to 3.5 GHz spectrum.<sup>28</sup> A five-year license term with the ability to secure two consecutive terms during the first application window for a total license term of ten years offers a compromise that once again balances the interests of large and small providers.<sup>29</sup> It would sufficiently increase the license term as compared to the current rules, and provide county-wide licensees with time to allow the market to mature, while simultaneously accommodating time that may be necessary for siting approvals for the expected large number of small cells. At the end of this period, licensees will have a better understanding of their spectrum needs and additional license terms could be based on a build out requirement coupled with a renewal expectancy.

## **VI. CONCLUSION**

There is tremendous interest in the 3.5 GHz CBRS spectrum band and it has the potential to create a new market of innovative uses. While tweaks to the auction rules may further promote efficient use of the spectrum, NTCA urges the Commission to not remake the band and license the spectrum to fit the business plans of a few large wireless providers. The record developed in the proceeding thus far supports compromises in the auction rules to accommodate the widest variety of applicants. A mix of census tract and county size licenses will also help the

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<sup>26</sup> Comments of the Blooston Rural Carriers, pp. 5-7.

<sup>27</sup> Comments of Rural Wireless Association, p. 9.

<sup>28</sup> Comments of Rural Wireless Association, p. 7.

<sup>29</sup> See, Comments of the Blooston Rural Carriers at p. 10.

Commission meets its Congressional mandate to ensure that small rural providers have access to spectrum and that rural consumers, too, receive the benefit of service.

Respectfully submitted,



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