

July 8, 2016

VIA ELECTRONIC DELIVERY

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

**Re: Notice of Ex Parte Presentation
GN Docket No. 14-177; IB Docket No. 15-256; RM-11664; WT Docket No. 10-112;
IB Docket No. 97-95**

Dear Ms. Dortch:

On Thursday, July 7, 2016, Nextlink Wireless, LLC (“Nextlink”), an operating affiliate of XO Communications, LLC (“XO”), along with Competitive Carriers Association (“CCA”) and several of its members representing nationwide, regional and rural carriers (collectively, the “Parties”), met with Johanna Thomas, Legal Advisor to Federal Communications Commission (“FCC” or “Commission”) Commissioner Jessica Rosenworcel, to discuss the forthcoming Report & Order and Further Notice of Proposed Rulemaking in the above-referenced proceedings.¹ A full list of attendees is included below.

The Parties noted that they are generally pleased with the Chairman’s proposal to free up more spectrum for 5G deployments and to allow the technology to drive the FCC’s policy.² Nevertheless, the Parties discussed modifications outlined below that will foster rapid and more innovative 5G deployments in urban, suburban and rural areas alike, highlighting the importance of the size of the license areas.

A. Benefits of Retaining BTA License Areas

CCA members noted their general support for the use of smaller geographic license sizes, especially for newly auctioned spectrum, so rural and regional carriers have an opportunity to bid on their existing geographic market territory without being forced to compete and expend unnecessary and often limited resources for the more urban portions of their markets. Nevertheless, CCA

¹ See FCC, “Fact Sheet: Spectrum Frontiers Proposal to Identify, Open Up Vast Amounts of New High-Band Spectrum for Next Generation (5G) Wireless Broadband” (rel. June 23, 2016), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0623/DOC-339990A1.pdf (“*Spectrum Frontiers Fact Sheet*”); *see also Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et al.*, Notice of Proposed Rulemaking, 30 FCC Rcd 11878 (2015) (“*NPRM*”).

² See Remarks of FCC Chairman Tom Wheeler, “The Future of Wireless: A Vision for U.S. Leadership in a 5G World,” National Press Club (June 20, 2016), *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0620/DOC-339920A1.pdf.

members and Nextlink all objected to the Commission's proposal to change incumbent local multipoint distribution service ("LMDS") spectrum license sizes from Basic Trading Areas ("BTAs") to counties. In this instance, the Commission's proposed change to county license areas would harm incumbent licensees, especially small and rural carrier licensees.

Many incumbents facing increased buildout requirements would likely fail to comply and thus would lose their licenses. Specifically, the cost of buildout requirements for each "new" county-based license within the existing licensed BTA would greatly multiply the expense of holding LMDS licenses.³ Rural carriers hold licenses in sparsely populated areas. For example, Central Texas Telephone Cooperative, Inc. ("CTTC") explained that it currently serves 19 counties within its two BTA licenses, and being forced to buildout networks in each of those 19 counties is untenable given technological and practical constraints. Some of CTTC's counties are completely rural and sparsely populated. In fact, CTTC's territory spans 3,200 square miles with less than two customers per square mile, and therefore it does not make sense to install points of presence ("POPs") or links per the proposed buildout requirements. Carriers should not be forced to deploy needless infrastructure to keep their licenses when they have already invested financial and human resources deploying and meeting the expected buildout requirements. Further, the Commission should not assume a relatively "empty" county justifies taking that license away from its incumbent holder; rural areas may not always remain sparsely populated, and agricultural or industrial use could invigorate spectrum utilization. Reducing the size of the license reduces its value, and carriers should not be deprived of a valuable asset for which they have already paid and constructed.

CTTC also noted that the proposed new license sizes do not make sense from a technological perspective. Even if a rural carrier wanted to deploy a mobile network in a rural, flat county on LMDS spectrum, the necessary technology simply does not exist given LMDS spectrum's limited propagation capabilities. Nationwide carriers may use LMDS spectrum for terrestrial mobile uses, but rural and regional users likely will continue to use LMDS for backhaul and point-to-point services for some time.

The Parties support the Commission's goals of driving new technologies, but in the case of incumbent LMDS licenses, shrinking the license size is not the correct policy. For example, C Spire explained that it is exploring new equipment and plans to begin testing new technologies within the next few months in the millimeter wave ("mmW") spectrum based on current license parameters. Changing the license size now would put competitive carriers like C Spire in the position of having to decide between stranding their investment or keeping their license at an unreasonable cost.

Making matters worse, "splitting" the LMDS blocks would exhaust the resources of incumbent carriers. Breaking up the A1 band into separate licenses or separating the A1 and A2 bands will eliminate existing deployment scenarios. Multipoint downlink operations in the A1 band would likely cause interference where new licensees' A1 downlinks are co-channel with legacy A1 uplinks, leading to an inefficient use of spectrum and the need to create a new generation of point-to-multipoint equipment. Splitting the A1 band into multiple parts would strand incumbent licensees' current deployments and may require completely new deployment in (at least) one half of the band. Similarly, a failure to timely allocate the A2, A3 and B bands for next-generation mobile broadband services will, at best, result in operators needing to senselessly reinvest in new equipment at a later

³ See, e.g., *Ex Parte* Letter from D. Cary Mitchell & John A. Prendergast, Counsel to the Blooston Rural Carriers to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177 et al. (filed June 17, 2016).

date that includes this 450 megahertz of spectrum—if the Commission’s delay does not result in these bands being left out of the 5G ecosystem entirely. Dramatically changing the character of existing LMDS licenses also would result in sunk costs for carriers who have already invested in network technology and may result in decreased coverage for rural areas. These carriers went to significant expense to construct their LMDS licenses, even when others were forced to return their licenses because of the lack of economically available equipment. This sort of change will deter 5G deployments in rural America.

Rather, the Parties encouraged the Commission to reward carriers for their investment. To that end, the Parties urged the Commission not to change the geographic license size for incumbent LMDS licensees. If, however, the FCC does change the geographic license area for 28 GHz A1 band LMDS licenses, the Parties proposed a few potential alternatives, including allowing incumbent licensees to meet any new performance benchmarks in one county in its originally-licensed BTA for purposes of renewal.

B. Benefits of Nextlink’s PEA Conversion Plan

Another alternative licensing regime would be for the FCC to issue 28 GHz A1 band licenses based on Partial Economic Areas (“PEAs”) and partitioned PEAs.⁴ Nextlink explained its PEA conversion plan using the attached slide presentation. Specifically, overlaying a map of PEAs on top of BTAs creates 993 discrete areas.⁵ Taking into account current licensees and FCC inventory, the 993 areas can be reduced to 651 discrete areas, or partitioned PEAs.⁶ Based on current licensing, 225 of the 412 total PEAs remain “whole” PEAs.⁷ Moreover, the Commission and incumbent licensees have the opportunity to complete 118 more PEAs at auction where the FCC is the only other spectrum license holder in the PEA.⁸ This proposal has the advantage of aligning the geographic licensing of 28 GHz with the licensing schemes in other 5G bands, including 37 GHz, 39 GHz and 600 MHz.

C. Providing Certainty to LMDS Licensees

As a result of significant confusion about the actual and potential technical uses for this spectrum, the Parties suggested that the Commission include the issue of the most appropriate geographic license size for LMDS in its Further Notice to develop a better record, thus enabling all interested parties and the FCC to better understand how LMDS is being used today and will be used in a 5G world, especially in rural America. Regardless, the Parties insisted that if the Commission makes any changes to incumbent LMDS licenses, it must provide additional relief to incumbent licensees, including a ten-year glide path for carriers to shift from BTA- to county-based license sizes and to deploy with sufficient time to modify current business plans. Certainty is needed to

⁴ See *Ex Parte* Letter from Michele C. Farquhar, Counsel to Nextlink Wireless, LLC and XO Communications, LLC to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177 *et al.* at 5-6 (filed June 30, 2016).

⁵ See attach. at 2.

⁶ See *id.* at 3-4.

⁷ See *id.* at 6.

⁸ See *id.* at 7.

encourage investment in higher spectrum bands, particularly where a vast majority of the spectrum will require significant research to develop new technology for the band.

The FCC is proposing to make many dramatic changes in the LMDS band – much smaller county-sized licensing, splitting the band (and existing deployment) into two pieces, more restrictive buildout requirements, and allowing only one of the four LMDS bands to be eligible for mobile uses – all of which will result in stranding existing deployment and investment. In light of these changes, the Parties urged the FCC to afford incumbent licensees, who bought this spectrum at auction and made substantial investments to meet the current buildout requirements, adequate time to meet the new 5G performance requirements and deploy in the band.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this letter electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

Michele C. Farquhar
Partner

Counsel to Nextlink Wireless, LLC and
XO Communications, LLC
Michele.farquhar@hoganlovells.com
D 1+ 202 637 5663

Enclosure
cc (via email):

Johanna Thomas

List of Attendees

Michele C. Farquhar of Hogan Lovells US, LLP, counsel to Nextlink/XO
Tom Peters of Hogan Lovells US, LLP, advisor to Nextlink/XO
Donald L. Herman, Jr. of Herman & Whiteaker on behalf of Adams Telecom. Inc., Central Texas Communications, Inc., E.N.M.R. Telephone Cooperative, Horry Telephone Cooperative, Inc., and Pine Belt Communications, Inc.
Ben Moncrief of C Spire (via telephone)
John Nettles of Pine Belt Communications, Inc. (via telephone)
Jamey Wigley of CTTC (via telephone)
Rebecca Murphy Thompson of CCA (via telephone)
Tim Donovan of CCA
Courtney Neville of CCA

Spectrum Frontiers: Partitioned PEAs Maps

July 6, 2016

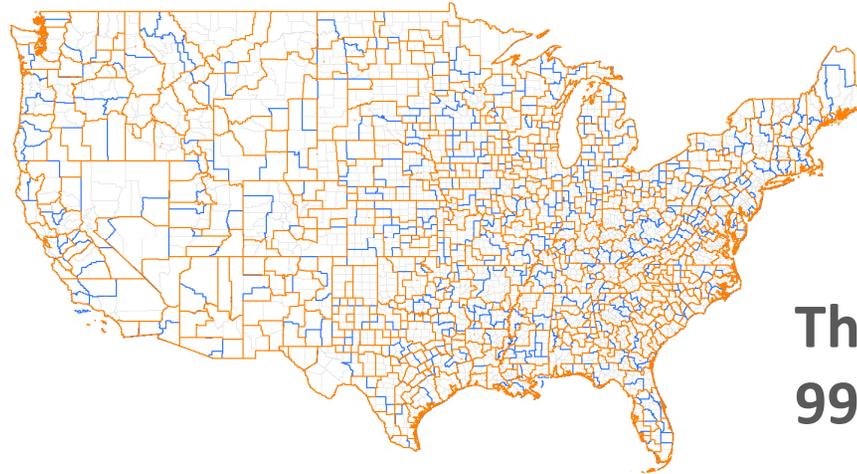
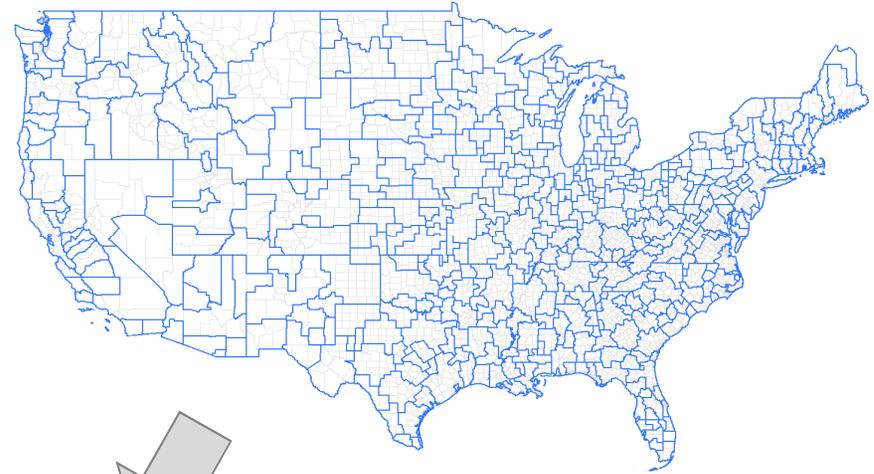
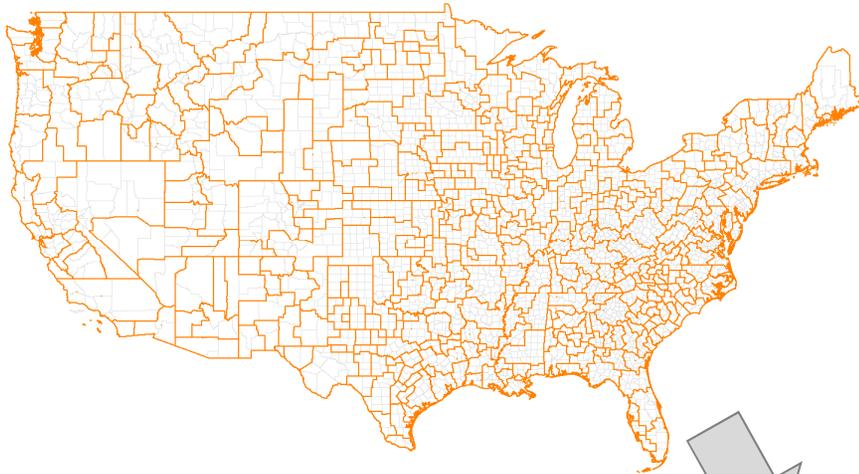
nextlink



TM

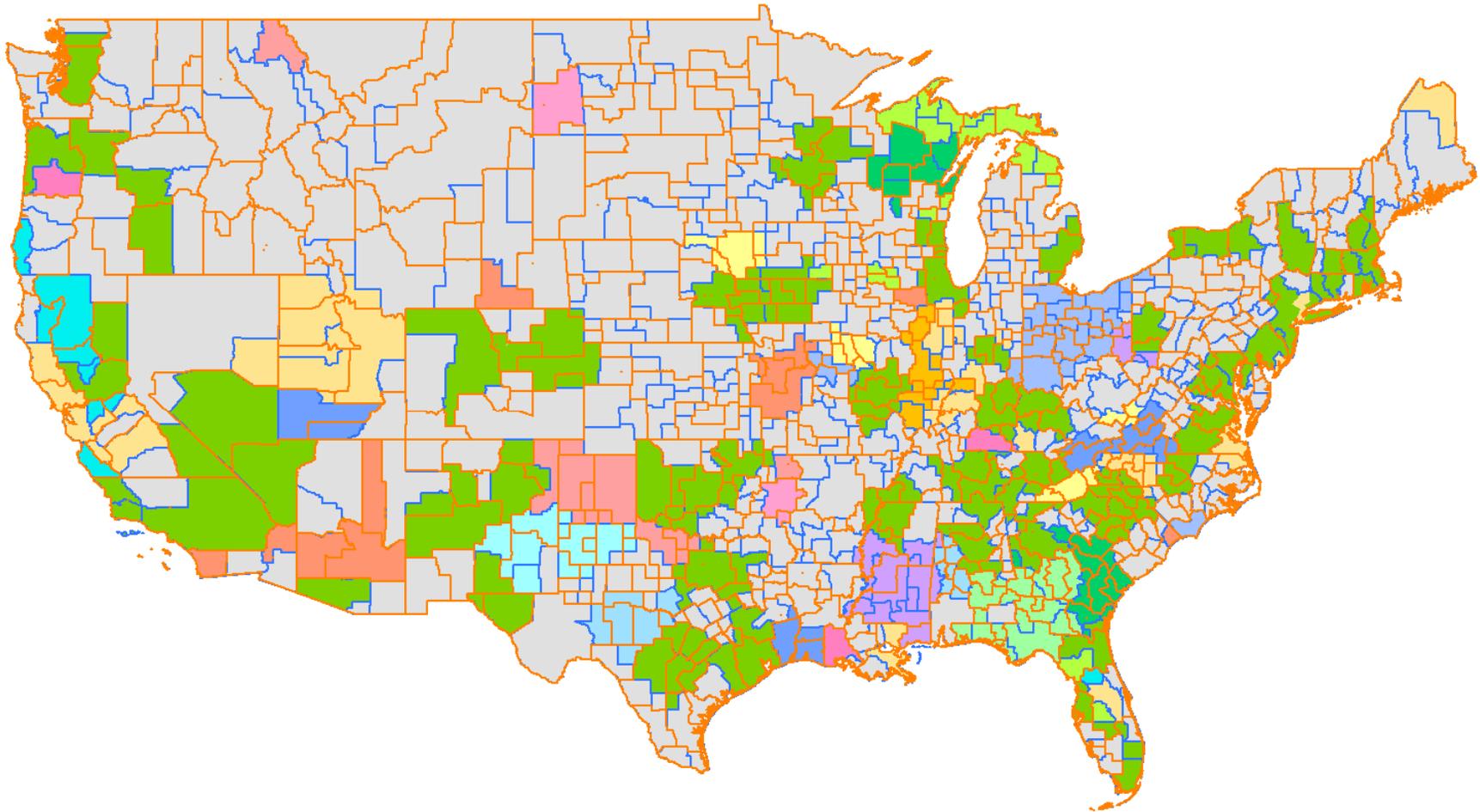
412* PEAs

489* BTAs

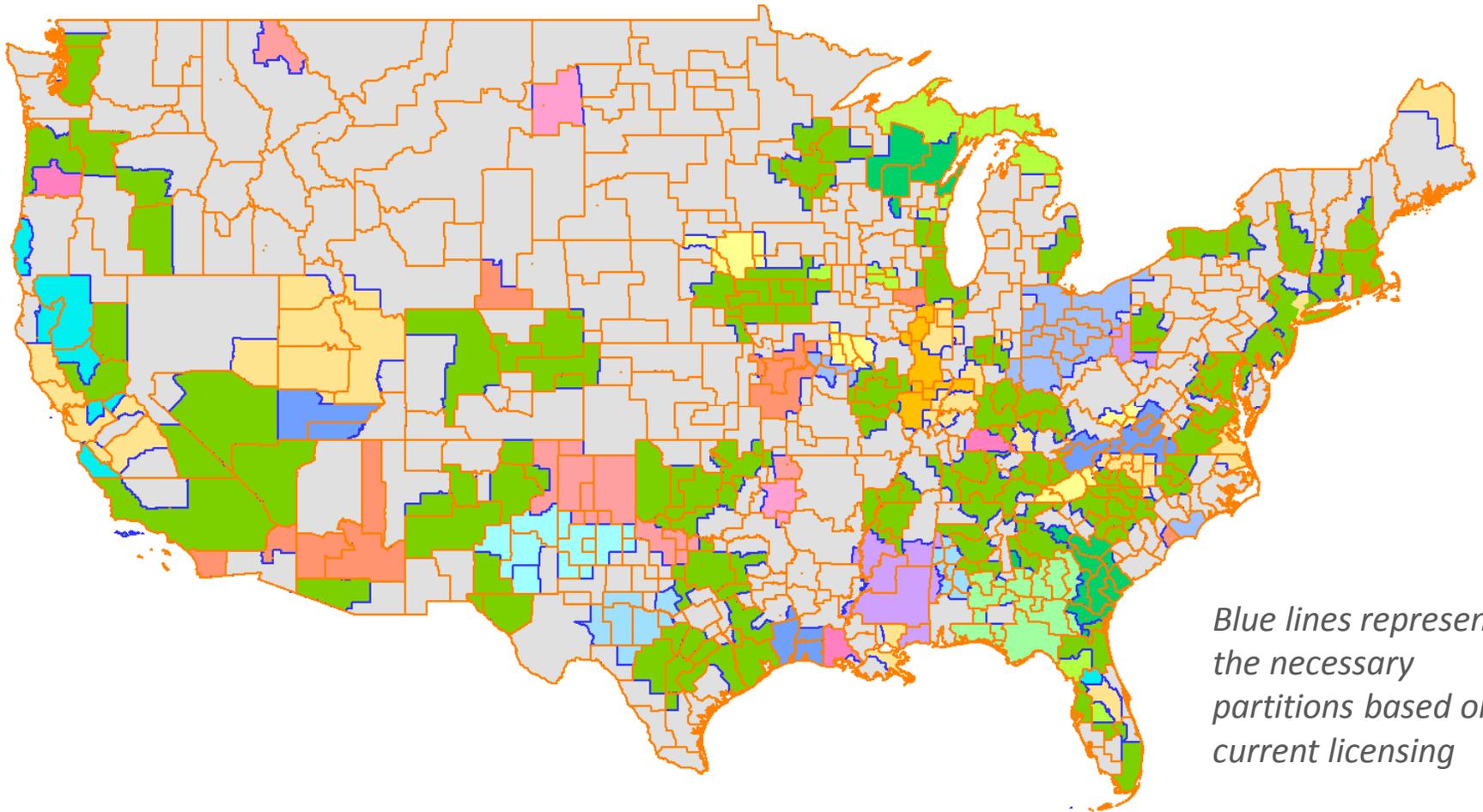


** Considers only PEAs and BTAs in the Continental US, AK, HI, and PR (only ConUS is shown)*

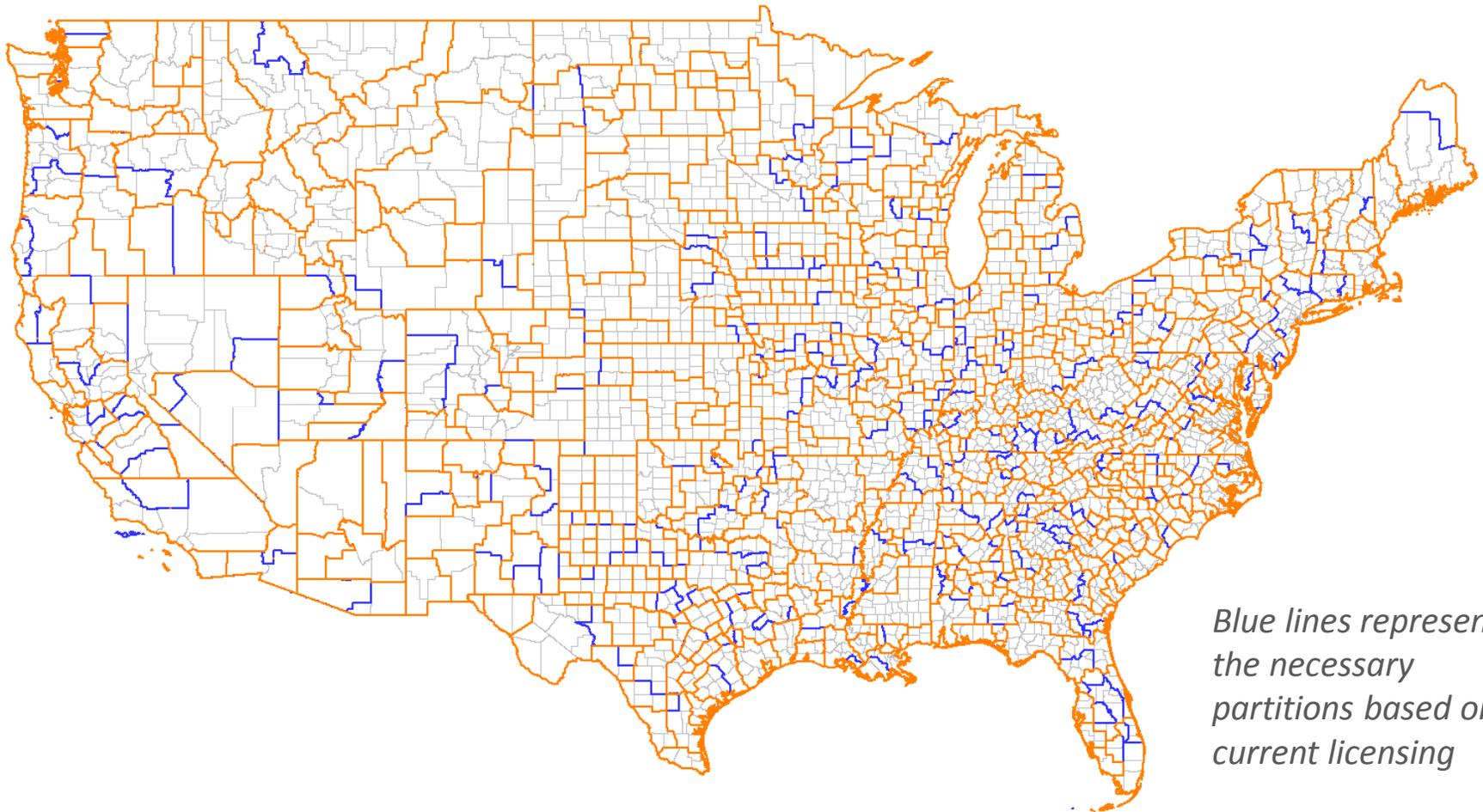
The union gives 993 discrete areas



Considering current licensees (colors) and FCC inventory (gray), many of the 993 areas can be grouped into whole and partitioned PEAS

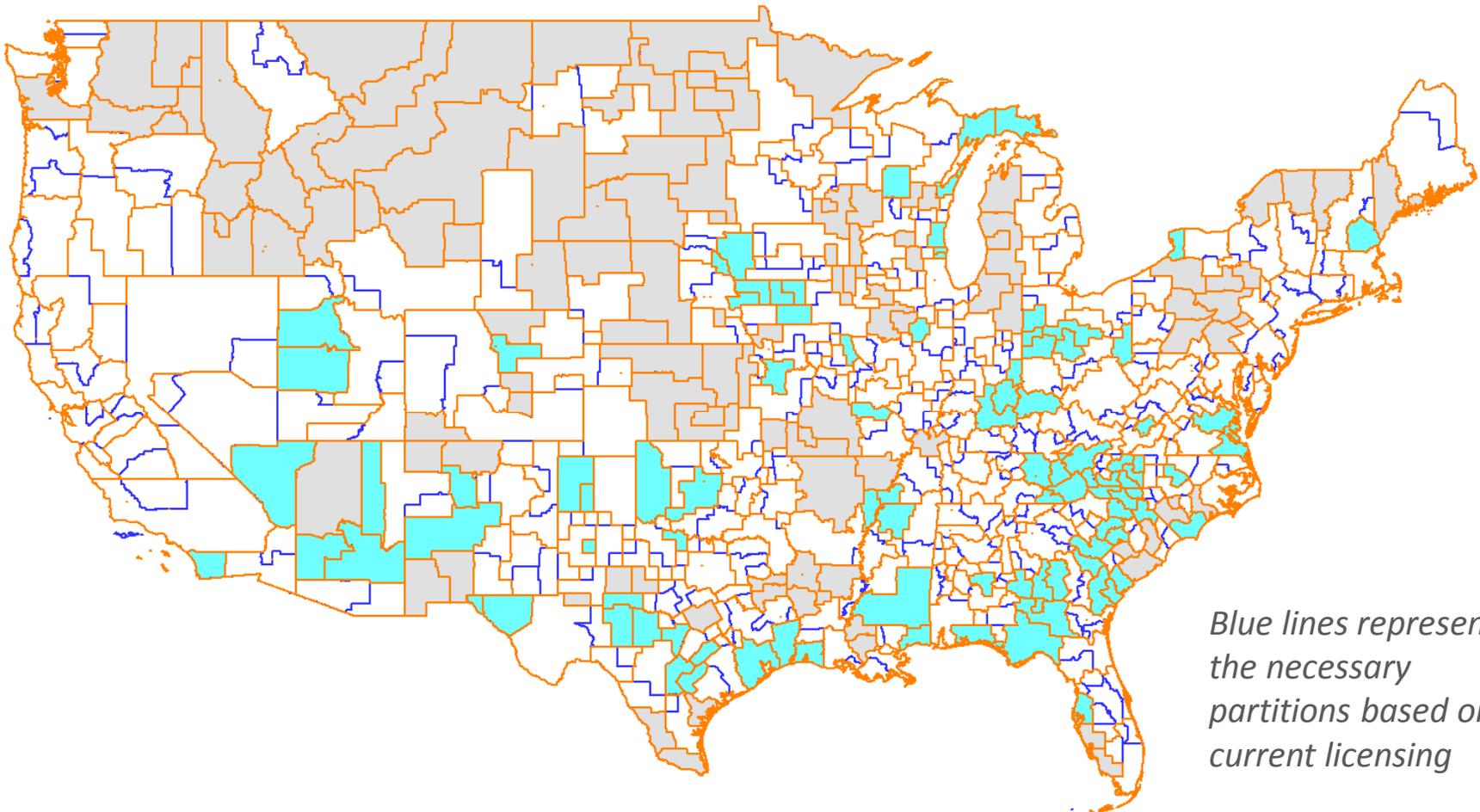


This results in **651** discrete areas we call “Partitioned PEAs”



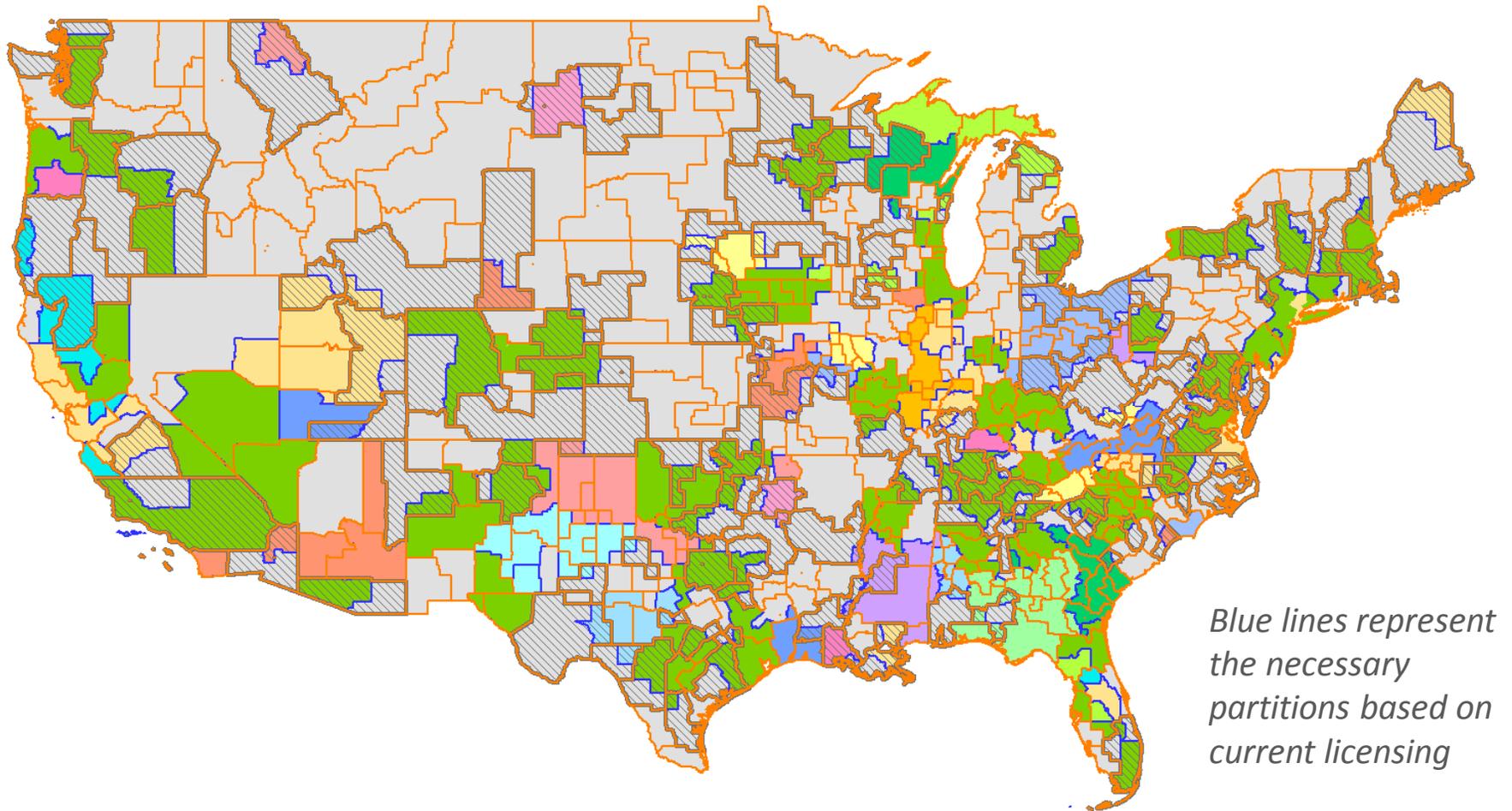
*Blue lines represent
the necessary
partitions based on
current licensing*

**And each county in the U.S. is easily mapped to a specific
Partitioned PEA**



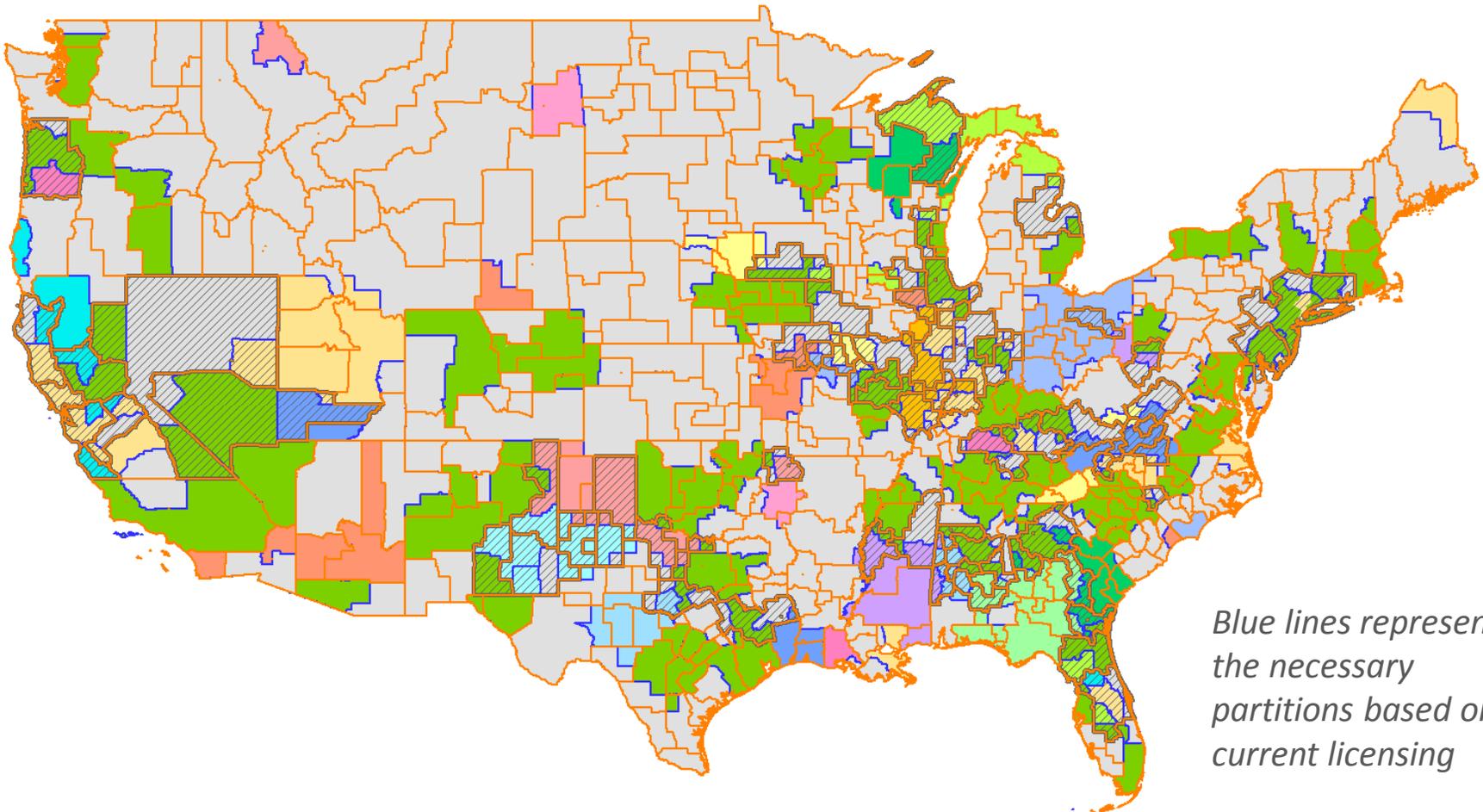
**Based on current licensing, 225 of 412 PEAs remain “whole” PEAs
– 100 that are licensed (blue) and 125 that are FCC-held (gray)**

Many More PEAs Can Become “Whole” Through the Auction Process



Incumbent licensees have the opportunity to complete 118 more PEAs at auction where the FCC is the only other holder (PEAs with hash marks)

Only a Few PEAs Need to Remain Partitioned



If the auction completes all 118 PEAs, then only 69 would remain partitioned due to multiple licensees (PEAs with hash marks)

Proposed PEA Conversion Plan - Results by Number of PEAs

