

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Service Rules for the Advanced Wireless Services) WT Docket No 12-357
H Block—Implementing Section 6401 of the)
Middle Class Tax Relief and Job Creation Act of)
2012 Related to the 1915-1920 MHz and)
1995-2000 MHz Bands)

To: The Commission

COMMENTS OF THE RURAL TELECOMMUNICATIONS GROUP, INC.

The Rural Telecommunications Group, Inc. (“RTG”),¹ by its attorneys, hereby files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking* proposing rules to auction and license ten megahertz of Advanced Wireless Services (“AWS”) spectrum in the 1915-1920 and 1995-2000 MHz bands (“Lower H Block” and “Upper H Block,” respectively; collectively the “H Block”).² RTG reminds the Commission of its obligation under Section 309(j) of the Communications Act of 1934, as amended (“Act”) to seek to promote the deployment of services “for the benefit of the public, *including those residing in rural areas.*”³ As such, the Commission should adopt auction and license rules that ensure the delivery of AWS H Block spectrum to consumers in rural areas.

¹ RTG is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RTG’s members have joined together to speed delivery of new, efficient, and innovative communications technologies to the populations of remote and underserved sections of the country. RTG’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RTG’s members serves less than 100,000 subscribers.

² See *Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357, FCC 12-152 (rel. December 17, 2012) (“AWS H Block NPRM”).

³ 47 U.S.C. § 309(j)(3)(A) (emphasis added).

These rules should (1) adopt smaller license areas than the proposed Economic Areas (“EAs”), which would harm consumers living, working and traveling in rural areas by effectively excluding from auction participation the small and rural carriers that predominantly serve such consumers; and (2) promote deployment of advanced wireless services to consumers living, working and traveling in rural areas by expanding bidding credit categories to encourage participation by small rural carriers that serve such consumers.

I. The H Block Should Be Licensed on the Basis of CMAs Instead of EAs To Safeguard Deployment of Advanced Services to Rural Areas Consistent with Section 309(j) of the Act.

RTG applauds the Commission for proposing rules for the auction and licensing of the ten megahertz Advanced Wireless Services (AWS) H Block to serve as an extension of the Personal Communications Services (“PCS”) band.⁴ RTG supports pairing the Lower H Block and the Upper H Block, with the Upper H Block used for high power base stations and the Lower H Block used for mobile and low power fixed operations. RTG believes this configuration would promote efficient use of the H Block and would facilitate deployment of high-value services in rural areas. RTG also agrees with the Commission that the potential for interference can be successfully abated by imposing technical limitations, such as reduced power limits, on H Block devices.

However, RTG opposes the licensing of the AWS H Block spectrum on the basis of EAs and alternatively on a nationwide basis. EAs often include densely populated urban areas and are typically much larger than the rural areas that rural carriers serve. These licensing

⁴ The Commission notes in the AWS H Block NPRM that AWS “H Block” is really a misnomer, the term refers to a continuation of the PCS-block letter designations in referring to AWS spectrum blocks. Though the H Block is essentially a PCS extension band, the Commission chooses nevertheless to use the long-standing “H Block” nomenclature that the Commission and many commenters have historically used in related rulemaking proceedings. AWS H Block NPRM at n. 3.

approaches would make AWS H Block licenses impractically large and likely unaffordable to small and rural carriers. In effect, many consumers living, working and traveling in rural areas who are predominantly served by small and rural carriers would be excluded from the benefits of any advanced service deployments on AWS H Block spectrum. Nationwide licensing, which is even more impractical and unaffordable to small and rural carriers, would only compound this harm to rural consumers. Moreover, facilitating the award of this spectrum to only the largest carriers could further the Twin Bell duopoly.

Americans living, working and traveling in rural areas would benefit from the Commission licensing the AWS H Block on the basis of Metropolitan Service Areas (MSAs) and Rural Service Areas (RSAs) (together, “Cellular Market Areas” or “CMAs”), an approach that segregates rural and urban areas. Carriers that focus on rural areas and a rural customer base would be better able to acquire CMA licenses that target rural geographic areas. Licensing on an EA basis would create larger licenses composed of both urban and rural areas and would allow licensees to focus on densely populated urban areas and ignore rural areas. EA based licenses, by the very nature of their size and because they include urban areas, will likely command very high prices at auction. Accordingly, small and rural telephone companies who cannot afford to cover large markets or desire to launch service and compete against nationwide carriers in urban markets) will be effectively excluded from participating in an auction, thus diminishing the variety and number of auction applicants. These results would be contrary to the Obama administration’s goal to push 4G technology to 98% of Americans,⁵ the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”)⁶ and Section 309(j) of the Act.⁷

⁵ *A Strategy For American Innovation: Securing Our Economic Growth and Prosperity*, National Economic Council, Council of Economic Advisers, and Office of Science and Technology

Licensing the AWS H Block on a CMA basis, however, is consistent with the Act, the Spectrum Act, and National Broadband Plan. Section 309(j)(3)(B) of the Act provides that in designing systems of competitive bidding, the Commission shall “promot[e] economic opportunity and competition and ensur[e] 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 [and] rural telephone companies....”⁸ Section 6401(b) of the Spectrum Act directs the Commission to assign initial AWS H Block licenses in accordance with Section 309(j) of the Act, which includes the above directive regarding disseminating licenses among a wide variety of applicants such as small businesses and rural telephone companies. CMA based licenses would be practical and affordable to small and rural telephone companies, and would be more likely to attract a wide variety of bidders to the AWS H Block auction.⁹

The demographics and physical characteristics of rural and urban areas differ dramatically. Rural areas, with their vast spaces, low population densities, challenging terrain and harsh weather, remain expensive and challenging locations to serve, even utilizing wireless technologies. Nationwide carriers generally focus their mobile services on cities, suburban areas and highways and their non-mobile services on businesses and Multi-Dwelling Units in dense

Policy, The White House (February 2011) *available at*

<http://www.whitehouse.gov/sites/default/files/uploads/InnovationStrategy.pdf>

⁶ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6401(b), 125 Stat. 156, 222-223 (2012), 47 U.S.C. § 1451. The Commission is required to establish by regulation a competitive bidding methodology in accordance with the statutory requirements of Section 309(j) of the Act when assigning licenses through auction. See 47 U.S.C. § 309(j)(3), (4).

⁷ 47 U.S.C. § 309(j).

⁸ 47 U.S.C. § 309(j)(B).

⁹ Notwithstanding the attractiveness of CMA licenses to small and rural carriers, if the Commission were to adopt CMA based licenses, this in no way will disenfranchise nationwide carriers from bidding on predominantly rural markets.

urban areas. Because lesser populated rural areas do not have the same concentration of cities, suburbs, business and Multi-Dwelling units, the business model of the nationwide carrier is not designed to support consumers in sparsely-populated rural areas. The proposed service rules for the AWS H Block would require that an H Block licensee provide signal coverage and offer service to at least 40 percent of the population in each licensed area within four years and to at least 70 percent of the population in each licensed area at the end of its 10 year license term. In theory, nationwide carriers who successfully bid on license blocks covering EAs could easily meet this obligation by only providing service to cities and suburbs because that is where population centers are located. However, if the AWS H Block was auctioned using licenses covering CMAs, this would force winning bidders to provide actual service to small towns and rural communities.

The MSAs and RSAs that comprise CMAs separate rural areas from urban areas. Segregating metropolitan areas from rural areas will allow the marketplace, through the auction process, to determine an accurate valuation for each area. Small and rural telephone companies interested in providing localized service to rural areas will not have to compete against “national” companies that value a license based solely on densely populated urban areas. The near ubiquity of cellular service in rural regions, as well as the large number of small, rural carriers, is a testament to the success of the Commission’s cellular rules and procedures. The Commission licensed the cellular spectrum in MSAs and RSAs. The use of MSAs and RSAs created a metropolitan/rural dichotomy that served the cellular market well. Carriers that were interested in serving rural customers could concentrate on these specific markets, whereas nationwide carriers could focus their attention on more-profitable urban and suburban areas. Applying this delinking approach to the AWS H Block would benefit the public and meet the

requirements of Section 309(j) of the Act by allowing small companies interested in providing service to rural areas to do so and protecting that consumers in those areas being constrained by ensuring they are served by willing carriers.

In other AWS spectrum allocations, the Commission made efforts to set aside specific spectrum blocks for licensing on an MSA and RSA basis, particularly the 1710-1755 MHz and 2110-2155 MHz bands (AWS-1).¹⁰ Indeed, when increasing the amount of AWS-1 spectrum to be licensed on a CMA basis, the Commission observed that “RSAs and MSAs allow entities to mix and match rural and urban areas according to their business plans and that, by being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies”¹¹ consistent with the mandate set forth in Section 309(j) of the Act. Those Americans who live, work and travel in rural areas would greatly benefit from the adoption of smaller license areas that segregate rural and urban areas because such licensing will allow those carriers that focus on serving rural areas to acquire licenses that target those geographic areas.

II. Expanding Bidding Credit Categories To Encourage Participation by Small and Rural Carriers Would Advance the Goals of Section 309(j) of the Act.

In the AWS H Block NPRM, the Commission recognizes its mandate under Section 309(j)(3)(B) of the Act to promote “economic opportunity and competition... by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses [and] rural telephone companies....”¹² The Commission also notes that “[o]ne of the principal means by which [it] fulfills this mandate is through the

¹⁰ See *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, Order on Reconsideration*, WT Docket No. 02-353, FCC 05-149 ¶ 14 (rel. August 15, 2005).

¹¹ See *Id.*

¹² 47 U.S.C. § 309(j)(B).

award of bidding credits to small businesses.” The Commission proposes to adopt for the AWS H Block auction the same small business size standards and associated bidding credits that were adopted for the AWS-1 band because of the similarities between AWS-1 service and broadband PCS service. Namely, the Commission proposes providing (1) small businesses (defined as entities with average annual gross revenues for the preceding three years not exceeding \$40 million) with a bidding credit of 15 percent and (2) very small businesses (defined as entities with average annual gross revenues for the preceding three years not exceeding \$15 million) with a bidding credit of 25 percent. RTG supports the adoption of these bidding credit categories as it has in prior spectrum auctions.

However, RTG also urges the Commission to further facilitate licensing of AWS H Block spectrum to small businesses and rural telephone companies by adopting an additional bidding credit category. In addition to adopting the small and very small business credits proposed in the AWS H Block NPRM, expanding bidding credit eligibility to carriers with average gross revenues not exceeding \$75 million for the preceding three years would further the goals of Section 309(j) by facilitating the acquisition of AWS H Block licenses by small but more established and profitable small businesses and rural telephone companies by reducing excessive concentration of licenses by large, nationwide carriers. This third bidding credit tier (“Enterprise Bidding Credit”) would provide a 10% bidding credit to eligible bidders.

Under the FCC’s proposal, small and rural telephone companies with average gross revenues above \$40 million would be afforded no bidding credit opportunities and forced to compete for spectrum with nationwide carriers flush with cash. The adoption of EA based licenses for the AWS H Block would further disadvantage these small and rural telephone companies as they would be unable to seek just the spectrum covering their rural customer base.

Instead, nationwide carriers would lay claim to large license areas containing swaths of rural spectrum which they have no intent to serve. Even at 10%, the Enterprise Bidding Credit would incentivize and help these slightly larger small and rural telephone companies to compete for spectrum with nationwide carriers on a more level playing field.

III. Conclusion

Congress has instructed the Commission under Section 309(j) of the Act to structure spectrum auctions that promote the dissemination of licenses to small businesses and rural telephone companies. Rural telephone companies, including members of RTG, know what it means to provide service to rural areas, and are ready and willing to do so. By proposing to license AWS H Block spectrum on an EA (or even nationwide) basis, the Commission risks the wholesale exclusion of access to AWS H Block spectrum by small and rural telephone companies, which would harm rural consumers. To meet its statutory obligation, the Commission should license the AWS H Block on an MSA and RSA basis. The Commission can further promote economic opportunity for small rural telephone companies and further promote competition by offering bidding credits to an additional category of small businesses.

Respectfully submitted,

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February 6, 2013