

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

In the Matter of )  
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Amendment of the Commission’s Rules with ) GN Docket No. 13-185  
Regard to Commercial Operations in the )  
1695-1710 MHz, 1755-1780 MHz, and 2155- )  
2180 MHz Bands )

To: The Commission

**COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.  
f/k/a RURAL TELECOMMUNICATIONS GROUP, INC.**

The Rural Wireless Association, Inc., f/k/a Rural Telecommunications Group, Inc. (“RWA”),<sup>1</sup> by its attorneys, hereby files these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Notice of Proposed Rulemaking and Order on Reconsideration* proposing rules to auction and license for commercial use four Advanced Wireless Services (“AWS”) bands at 1695-1710 MHz, 1755-1780 MHz, 2020-2025 MHz, and 2155-2180 MHz (“AWS-3”).<sup>2</sup>

**I. BACKGROUND**

The Commission plans to auction the AWS-3 spectrum as early as September 2014 to implement a Congressional directive in the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) to grant new initial licenses for the AWS-3 bands by February 2015.

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<sup>1</sup> RWA is a Section 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies through advocacy and education. RWA’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. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s members serves less than 100,000 subscribers.

<sup>2</sup> Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185, *Notice of Proposed Rulemaking and Order on Reconsideration*, FCC 13-102 (rel. July 23, 2013) (“AWS-3 NPRM”). Consistent with the FCC’s revised nomenclature, “AWS-3” refers to the spectrum, separately and collectively, on the four bands for which comment is sought in the AWS-3 NPRM.

RWA reminds the Commission of additional directives from Congress set forth in Section 309(j) of the Communications Act of 1934, as amended (“Act”) that the Commission must satisfy when prescribing regulations for the award of new service licenses through competitive bidding. Specifically, Congress mandated in Section 309(j)(3) that the Commission include in its regulations safeguards to protect the public interest in the use of the spectrum and seek to promote the purposes of the Act (which include making radio communication service available “to *all* the people of the United States”)<sup>3</sup> and certain objectives, 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>4</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 businesses, 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>5</sup>

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<sup>3</sup> 47 U.S.C. § 151 (emphasis added).

<sup>4</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) (“*Adarand*”) and *United States v. Virginia*, 518 U.S. 515, 531-34 (1996) (“*VMI*”).

<sup>5</sup> 47 U.S.C. § 309(j)(4)(B)&(C) (emphasis added).

These basic statutory requirements underscore each and every Commission rulemaking proceeding to adopt regulations for the awarding of new service licenses through competitive bidding, including AWS-3.

## II. DISCUSSION

The Commission must ensure that its AWS-3 auction and license rules are consistent with the objectives of Section 309(j) of the Act. Specifically, the Commission should (1) auction licenses based on Cellular Market Areas (“CMAs”) rather than Economic Areas (“EAs”); and (2) adopt geographic-based construction benchmarks rather than the population-based construction benchmarks proposed in the *AWS-3 NPRM*.

### a. The Commission Should License AWS-3 on a CMA Basis to Ensure the Provision of AWS-3 Service to Rural America.

RWA opposes the Commission’s proposal to license the AWS-3 spectrum on the basis of EAs and disagrees with the Commission’s broad assertion that EAs “represent a natural market unit for local or regional service areas.”<sup>6</sup> As the Commission notes, the Bureau of Economic Analysis defines an EA as “one or more economic nodes—*metropolitan areas* or similar areas that serve as centers of economic activity—and *the surrounding counties* that are economically related to the nodes.”<sup>7</sup> Because these economic nodes often include densely populated urban areas and are typically much larger than the rural areas that rural carriers serve, EA-based licensing would make AWS-3 licenses impractically large and unaffordable to small and rural carriers, and not at all representative of local service areas. The argument that licensing spectrum on a CMA basis is necessary to ensure participation by small and rural carriers because EA licenses are too large is well documented in various Commission proceedings.<sup>8</sup> If the

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<sup>6</sup> *AWS-3 NPRM* at ¶ 51.

<sup>7</sup> *Id.* (emphasis added).

<sup>8</sup> See Petition for Reconsideration filed by Rural Wireless Association, *Service Rules for Advanced Wireless Services H Block - Implementing Section 6401 of the Middle Class Tax Relief*

Commission licenses the AWS-3 spectrum on the basis of EAs it will be highly unlikely that small and rural carriers will participate in the auction as it will not be affordable. This will result in AWS-3 licenses being awarded to large carriers who have historically chosen not to serve rural areas, and who will have no regulatory incentive to do so if the Commission adopts population-based construction requirements. 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-3 spectrum in violation of Section 309(j)(3)(A) of the Act.

Furthermore, EA based licenses, by the very nature of their size and because they include urban areas, will 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

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*and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357 (filed Sept. 16, 2013); Reply Comments of Competitive Carrier Association, *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Comment Sought on Competitive Bidding Procedures for Auction 96*, AU Docket No. 13-175, at 3 (filed Aug. 16, 2013) (stating “smaller carriers will not have the financial resources to participate in [the H Block] auction, and others, absent use of smaller geographic license areas like CMAs” (“*CCA H Block Reply Comments*”)); *See also CCA H Block Reply Comments* at 4 citing Letter from Patrick D. Riordan, President and CEO, New-Cell, Inc. d/b/a Cellcom to Marlene H. Dortch, Secretary, FCC, AU Docket No. 13-178, et al., at 2 (filed Aug. 5, 2013) (“[If] the Commission adopts EAs for its upcoming auctions, it will not be able to participate”); Letter from Ron Smith, President, Bluegrass Cellular, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 10, 2013) (“Bluegrass Cellular will not participate in the 600 MHz spectrum auction if the FCC does not license the spectrum in small geographic areas, like CMAs.”); Letter from Gregory W. Whiteaker, Counsel for Plateau Telecommunications, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 30, 2013); Letter from Gregory W. Whiteaker, Counsel for Northwest Missouri Cellular Limited Partnership to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 30, 2013); Letter from Gregory W. Whiteaker, Counsel for Chat Mobility to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Aug. 8, 2013); see also U.S. Cellular, *Spectrum Incentive Auction: An Opportunity to Promote Competition in the Wireless Market* at 9, attached to Letter from Leighton T. Brown, Counsel for U.S. Cellular Corp. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed July 15, 2013) (noting that “CMAs [are] needed to preserve opportunities for small and regional carriers, as well as new entrants, to provide an important source of competition.”).

auction, thus diminishing the variety and number of auction applicants. This essentially leaves only deep-pocketed, nationwide carriers to acquire the licenses. Facilitating the award of AWS-3 licenses to only the large, nationwide carriers would not only promote the excessive concentration of licenses in violation of Section 309(j)(3)(B), but also risk furthering the Twin Bell duopoly.

Licensing AWS-3 on a CMA basis, however, would be suitable to small and rural telephone companies because they would be better positioned to obtain local licenses suited to their budgets and business plans. Moreover, CMA-based licensing would offer a beneficial delinking approach to AWS-3 because the Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”) that comprise CMAs separate rural areas from urban areas. This approach would allow small companies interested in providing service to rural areas to do so and benefit rural consumers by ensuring that they are served by willing carriers. Conversely, large carriers that wish to establish vast footprints could bid on and aggregate CMA licenses into larger 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. Accordingly, CMA-based licensing would be more likely to attract a wide variety of bidders to the AWS-3 auction in compliance with Section 309(j)(3)(B) of the Act.

In its proposal to adopt EA-based licensing for AWS-3, the Commission cites to the spectrum’s spectral proximity to the AWS-1 and AWS-4 bands, which include EA-based licenses, and possible efficiencies to facilitate licensees’ consolidating operations with those bands. However, the Commission gives short shrift to AWS-3’s proximity to the 734 CMA-based licenses in the AWS-1 A Block. When the Commission adopted those CMA-based AWS-

1 licenses in 2005, it specifically contemplated the spectrum opportunities it would create for small and rural carriers, a key objective of Section 309(j)(4)(C) of the Act: “RSAs and MSAs allow entities to mix and match rural and urban areas according to their business plans and that, [sic] by being smaller, these types of geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies.”<sup>9</sup> Adopting CMA-based licensing for AWS-3 would still allow AWS licensees to consolidate operations with adjacent-band licenses and would be consistent with Section 309(j) mandates. The natural market unit for local or regional service areas is CMAs. Americans who live, work and travel in rural areas would greatly benefit from the adoption of CMA 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.

**b. Only Geographic-Based Performance Requirements Will Result in a Meaningful Buildout and Comport with Section 309(j) of the Act.**

RWA supports the adoption of geographic-based performance requirements rather than population-based performance requirements in order to prevent spectrum warehousing, particularly if the Commission adopts EA-based licenses. In the *AWS-3 NPRM*, the Commission proposes the following buildout requirements:

- Interim Buildout – Within four years, an AWS-3 licensee must provide signal coverage to at least 40% of the population in its license area.
- Final Buildout – By the end of the 10-year license term, an AWS-3 licensee must provide signal coverage to at least 75% of the population in its license area.

The Commission requests comment on whether the use of population-based buildout requirements will result in meaningful buildout.

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<sup>9</sup> 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).

Carriers that successfully bid on AWS-3 licenses can satisfy the FCC's proposed buildout obligation by only providing service to cities and suburbs where population centers are located because the costs of serving concentrated populations with a small number of sites are lower than serving populations that are spread out among rural and remote areas. As long as licensees are allowed to serve the highest population numbers with the fewest sites at the lowest cost to satisfy construction benchmarks, consumers in rural areas will continue to be overlooked as large carriers focus on high population density urban areas and not rural areas. Safeguards such as geographic-based performance requirements would help protect rural consumers from this harm in accordance with Section 309(j) of the Act.

Coupling population-based performance requirements with EA-based licensing, which by definition would include metropolitan or similar areas, would only compound this harm. Those entities that are able to afford EA-based AWS-3 licenses would likely satisfy the 40% and 75% population-based benchmarks by providing service only to metropolitan and densely populated areas and then warehousing the spectrum without ever providing service to rural areas. Most small and rural carriers that actually serve consumers in rural areas would have to wait out the auction and then try to negotiate secondary market arrangements with the AWS-3 licenses containing their rural markets, assuming a secondary market even develops and license holders are willing to part with their spectrum at reasonable prices. Adopting rules that result in rural carriers having to rely on secondary markets to obtain licenses contravenes Section 309(j) which addresses the assignment of *initial licenses* through competitive bidding and requires the Commission to adopt a competitive bidding methodology that allows for the dissemination of licenses to a wide variety of *applicants*, including rural telephone companies.<sup>10</sup> To comply with Section 309(j), the Commission must adopt rules that draw rural carriers into the competitive

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<sup>10</sup> See 47 U.S.C. § 309(j) and 309(j)(3).

bidding process rather than push them out of the process to secondary markets. Furthermore, waiting on secondary market transactions will unduly delay AWS-3 deployments reaching consumers in rural areas, which is counter to Section 309(j)(3)(A) of the Act. Auctioning and licensing AWS-3 using CMAs would force winning bidders to provide actual service to small towns and rural communities.

### **III. CONCLUSION**

Congress's mandates under Section 309(j) of the Act to structure spectrum auctions are plain. Among other things, Section 309(j) requires the Commission to promote the dissemination of licenses to small businesses and rural telephone companies. By proposing to adopt EA-based licensing for AWS-3 as well as population-based performance requirements, the Commission risks the wholesale exclusion of small and rural telephone companies in the AWS-3 auction at great harm to rural consumers. To keep the AWS-3 auction in step with Section 309(j) of the Act, the Commission should license the AWS-3 spectrum on a CMA basis and adopt geographic-based performance requirements.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

By: */s/ Caressa D. Bennet*

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