

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

In the Matter of)
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) WT Docket No 12-357
1995-2000 MHz Bands)
)
)
Petition for Reconsideration of the Rural Wireless)
Association, Inc.)

To: The Commission

**REPLY COMMENTS OF
THE RURAL WIRELESS ASSOCIATION, INC.**

The Rural Wireless Association, Inc. (“RWA”), by its attorneys, respectfully submits these reply comments with regard to the Petition for Reconsideration RWA filed with the Federal Communications Commission (“FCC” or “Commission”) on September 16, 2013 (“*Petition*”).¹ In its *Petition*, RWA asked the Commission to reconsider the service rules it adopted for licensing the Advanced Wireless Services H Block (1915-1920 MHz and 1995-2000 MHz bands) (“H Block”), license the spectrum on the basis of Cellular Market Areas (“CMAs”), and adopt geographic-based construction requirements. These changes to the H Block rules are necessary to ensure the Commission’s rules comply with Section 309(j) of the Communications Act of 1934, as amended (the “Act”).

¹ *Petition for Reconsideration of the Rural Wireless Association, Inc.* in WT Docket No. 12-357 (filed Sept. 16, 2013).

Not one party has opposed RWA's *Petition*, and for good reason: Section 309(j) of the Act clearly requires the Commission to adopt competitive bidding rules and regulations for the assignment of initial wireless licenses that safeguard the public interest by ensuring (1) consumers residing in rural areas have access to new technologies, products, and services; (2) there is not an excessive concentration of licenses, and licenses are disseminated among a wide variety of applicants, including small businesses and rural telephone companies; (3) service is promptly delivered to rural areas; (4) licenses and spectrum are not warehoused or stockpiled; and (5) license service areas promote the distribution of licenses among geographic areas and provide economic opportunities for small businesses and rural carriers.² In order to meet these statutory goals, the Commission must reconsider its service rules and license the H Block spectrum based on CMAs and adopt geographic based construction benchmarks.

In addition, the Commission's *H Block Report and Order*³ fails to analyze and explain how the H Block rules the FCC has adopted comply with Section 309(j) of the Act. Such analysis would be extremely difficult considering the majority of commenters in the proceeding have indicated that licensing the spectrum on the basis of Economic Areas ("EAs") would result in the inability of small businesses and rural carriers to participate in the auction. As adopted, the Commission's H Block rules not only fail to promote the deployment of services to rural areas, as required by Section 309(j)(3)(A) and participation in the auction by small businesses

² See 47 U.S.C. §§ 309(j)(3) and 309(j)(4).

³ *Service Rules for 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, Report and Order, 28 FCC Rcd 9483 (rel. June 27, 2013) ("*H Block Report and Order*").

and rural telephone companies, the rules are a barrier to the meaningful participation by these carriers in the auction.

NTELOS Holdings Corp. (“nTelos”) filed comments supporting RWA’s *Petition*. nTelos is a small rural, regional carrier that provides high-speed voice and data services to approximately 455,000 customers and competes with nationwide wireless carriers within its service territory.⁴ For the past several years, nTelos has been seeking additional spectrum to effectively deploy its 4G LTE network, but acquiring spectrum on the secondary market has been “largely unsuccessful.”⁵ nTelos is justifiably concerned that the Commission’s decision to license the H Block on the basis of EAs “may hinder small, rural and regional carriers from meaningfully participating in the H Block Auction... [and] many carriers may be forced to sit out this Auction due substantially in part to the Commission’s decision to allocate the H Block in EA geographic areas.”⁶ The Commission must license the H Block on the basis of CMAs to ensure all carriers have access to the H Block spectrum, and to ensure the spectrum is disseminated to a variety of licensees, as required by Section 309(j).

I. **Section 309(j) of the Act Demands Smaller License Areas**

Section 309(j)(3)(B) directs the Commission to “[avoid] the excess concentration of licenses and [disseminate] licenses among a wide variety of applicants, including small

⁴ Comments of nTelos Holdings Corp., *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, Petition for Reconsideration of the Rural Wireless Association, Inc. f/k/a Rural Telecommunications Group, Inc.*, WT Docket No. 12-357 (filed Nov. 12, 2013) (“*nTelos Comments*”).

⁵ *nTelos Comments* at p. 2.

⁶ *nTelos Comments* at p. 2.

businesses, rural telephone companies, and businesses owned by members of minority groups and women.”⁷ Section 309(j)(4)(C) requires the Commission to “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.”⁸ Licensing the H Block spectrum on the basis of EAs does not meet the statutory requirements of Sections 309(j)(3)(B) or 309(j)(4)(C).

As noted by nTelos, “CMAs are more manageable geographic areas and therefore will allow both smaller and larger carriers an opportunity to meaningfully participate and acquire spectrum.”⁹ The Commission cannot ignore the record in this proceeding, which clearly shows that small carriers are unlikely to participate in the auction if the Commission licenses the H Block on the basis of EAs.¹⁰ No less than six rural carriers have indicated they would not be

⁷ 47 U.S.C. § 309(j)(3)(B).

⁸ 47 U.S.C. § 309(j)(4)(C).

⁹ *nTelos Comments* at p. 6.

¹⁰ *See Petition* at note 19 (citing *Comments of Rural Telecommunications Group, Inc., 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 at p. 3 (filed Feb. 6, 2013)); *Reply Comments of Rural Telecommunications Group, Inc., 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 at p. 3 (filed March 6, 2013); *see also Petition* at note 20 (citing *CCA Reply Comments* at p. 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 p. 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.*

able to participate in the auction if the Commission adopts EAs.¹¹ Not one carrier has made the same statement with regard to adopting CMAs. Clearly, adopting EAs is a barrier to rural carrier participation in the H Block auction, which is a clear violation of Section 309(j).

nTelos is one of those small rural carriers that will be unlikely to participate in the auction, stating if “the Commission chooses EA-based licenses for Auction 96, nTelos is one of the smaller, rural and regional carriers that will be forced to conduct a serious cost and benefit analysis regarding whether or not to participate in an auction that would very likely result in expending significant funds and resources during the process, with no reward.”¹² The Commission must look at the full record in this proceeding, which clearly shows the majority of

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.”) *Cf.* William Lehr, MIT and J. Armand Musey, Summit Ridge Group, LLC, *Right-sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction*, (Nov. 20, 2013) available at <http://competitivecarriers.org/wp-content/uploads/2013/11/Summit-Ridge-Group-Right-sizing-Spectrum-Auction-Licenses-FINAL.pdf> (last accessed Nov. 22, 2013) (EA-sized license areas are significantly larger than small operators need. The costs of obtaining and constructing EAs may foreclose smaller carriers from participating in the auction, which will further concentrate spectrum in the hands of the largest carriers who may find it is not economical to serve rural areas of the EA, resulting in the delayed deployment of services to rural areas.)

¹¹ *Id.* and *infra* note 18.

¹² *nTelos Comments* at note 14.

commenters are against the adoption of licensing the spectrum on the basis of EAs as it will clearly preclude a number of small rural carriers from participating in the auction in violation of the clear mandates of the Act.

The Commission will be missing two major bidders in the H Block auction. T-Mobile, USA (“T-Mobile”) and Sprint Corporation (“Sprint”) have both announced they will not participate in the H Block auction.¹³ With T-Mobile and Sprint bowing out of the auction, the only remaining commenting party that truly supports licensing the H Block on the basis of EAs¹⁴ is AT&T Inc. (“AT&T”).¹⁵ AT&T’s reasoning for EA licensing is based on the fact that the

¹³ T-Mobile USA, Inc., Security Exchange Commission Form of Prospectus Disclosing Information, Facts, Events Covered In Both Forms 424B2, 424B3, Preliminary Prospectus Supplement to Prospectus Dated November 7, 2013 at S-27 (filed Nov. 12, 2013); Joseph Euteneuer, Wells Fargo Technology, Media & Telecom Conference, November 13, 2013, live audio webcast available at <http://investors.sprint.com/CorporateProfile.aspx?iid=4057219> last accessed Nov. 18, 2013.

¹⁴ While the Competitive Carrier Association initially supported EA licensing, it has since filed Reply Comments in response to the H Block Competitive Bidding Notice of Proposed Rulemaking, stating “smaller carriers will not have the financial resources to participate in this auction, and others, absent use of smaller geographic license areas like CMAs.” 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. 13-178, at p. 3 (filed Aug. 16, 2013) (“CCA Reply Comments”).

¹⁵ Comments of AT&T, Inc., *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, at pp. 7-8 (filed Feb. 6, 2013) (also arguing EAs support the industry’s deployment of LTE services; however EA license areas are not necessary for the deployment of LTE services). While MetroPCS Communications, Inc. also supported EAs, it has since merged with T-Mobile, and will not be participating in the auction. See Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications, Inc., DA No. 13-384, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 12-301, (March 12, 2013); see also Comments of MetroPCS Communications, Inc., *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 (filed Feb. 6, 2013).

Commission adopted EAs for the AWS-1¹⁶ and AWS-4¹⁷ spectrum bands. However, the Commission is not bound to adopt a licensing scheme based on EAs simply because it has done so in the past; in fact, to do so violates the statutory mandates of Section 309(j) of the Act and is arbitrary and capricious.

II. Population-Based Construction Benchmarks Do Not Serve the Public Interest

As outlined in the *Petition*, the FCC should reconsider its adoption of population-based construction benchmarks because they encourage deployment of services to population-dense urban areas without ensuring service is deployed to rural areas as required by Section 309(j)(4). The Commission is statutorily obligated to adopt performance requirements that “ensure prompt delivery of service to rural areas... prevent stockpiling or warehousing of spectrum by licensees or permittees, and... promote investment in and rapid deployment of new technologies and

While Cellular South d/b/a C Spire (“C Spire”) recommended the Commission adopt EAs, it couched its recommendation in terms of the Commission licensing the spectrum in geographic areas “no larger than the proposed [EAs].” C Spire recognized that “competitive operators, Designated Entities, and virtually all other new entrants cannot realistically participate in the bidding for the largest geographic license areas. This effectively awards those licenses to the Bell incumbents for the reserve price which... further concentrates valuable spectrum in the hands of the largest operators.” Comments of Cellular South, Inc., *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 at p. 5 (filed Feb. 6, 2013).

¹⁶ *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162, at pp. 8-9 (2003).

¹⁷ *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket No. 12-70, Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5, MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, ET Docket No. 10-142, Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, Report and Order and Order of Proposed Modification, FCC 12-151 (rel. Dec. 17, 2012).*

services.”¹⁸ Adopting population-based construction requirements will have the opposite effect by incentivizing licensees to build out highly populated urban areas without promoting the deployment of services to rural areas, which violates the Commission’s statutory obligations under Section 309(j)(4)(B) of the Act. Therefore, the Commission must reconsider its decision to adopt population-based buildout requirements, and instead adopt geographic-based construction benchmarks, which would encourage the deployment of services to rural areas.

III. Conclusion

For these reasons, RWA respectfully requests that the Commission reconsider the *H Block Report and Order*, adopt rules licensing the H Block on the basis of CMAs rather than EAs, and revise the performance obligations to require H Block licensees to meet geographic-based construction benchmarks instead of population-based benchmarks.

Respectfully submitted,

RURAL WIRELESS ASSOCIATION, INC.

By: */s/ Caressa D. Bennet*

Caressa D. Bennet
Tara B. Shostek

Bennet & Bennet, PLLC
6124 MacArthur Boulevard
Bethesda, MD 20816
(202) 371-1500

Its Attorneys

November 22, 2013

¹⁸ 47 U.S.C. § 309(j)(4)(B).