



December 6, 2013

VIA ELECTRONIC FILLING

Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Ex Parte Presentation
GN Docket No. 12-268: *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*

Dear Ms. Dortch:

On December 4, 2013 and December 5, 2013, members and representatives of the Rural Wireless Association (“RWA”)¹ including Caressa D. Bennet, RWA General Counsel; Robert Silverman, Bennet & Bennet, PLLC; Tara B. Shostek, Bennet & Bennet, PLLC; Dave Dengel (Copper Valley Telecommunications); George Woodward (Trilogy LTE Services); Brian Woody (Union Wireless Telephone); Jeff Mason, Limitless Mobile; and Jill Canfield, Director of Legal and Industry & Assistant General Counsel for NTCA - The Rural Broadband Association (“NTCA”)² participated in several meetings at the Federal Communications Commission (“FCC” or “Commission”). A complete list detailing those participating in these meetings is attached as Exhibit A.

During these meetings, the parties discussed RWA’s and NTCA’s joint proposal to revise the geographic licensing model for the Incentive Auction from a strictly Economic Area (“EA”) based model to an auction model, detailed below, that would allow the FCC to conduct the reverse broadcast auction, broadcast spectrum repacking,

¹ The Rural Wireless Association, Inc. is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

and forward spectrum auction on an EA basis but license the spectrum on the basis of Metropolitan Statistical Areas (“MSAs”) and Rural Statistical Areas (“RSAs”), collectively Cellular Market Areas (“CMAs”). RWA and NTCA provided the Commission with a map showing how MSAs nest completely within EAs, except in three instances (Exhibit B).

Revised Auction Model

Under the RWA/NTCA auction model, the Commission would conduct the Incentive Auction that is the subject of the *Incentive Auction NPRM*³ in a bifurcated proceeding using the boundaries of the 176 existing EAs. In the initial auction phase, the Commission would conduct the reverse broadcast auction and initial forward auction, which would include the repacking of the broadcast spectrum. Forward auction bidders would bid on the basis of EAs, but each winner would receive licenses covering only the MSA or MSAs (when there is more than one MSA) located within the relevant EA. These predefined MSA groupings would presumably be targeted mainly by larger national carriers and growing regional carriers that would compete to pay top dollar for such spectrum in these densely populated areas with large addressable markets. After bidding is completed in the initial auction phase, the remaining 429 RSAs would be auctioned in a second auction. A map depicting the remaining RSAs was also distributed at these FCC meetings and is attached as Exhibit C. This second auction would be a straight auction and would not involve broadcasters. The RSAs, which cover lower population densities are likely to be pursued by small businesses and rural telephone companies as well as large carriers interested in expanding their MSA footprints within the relevant EA.

RWA and NTCA identified numerous reasons why their proposed auction model would be ideal for the Incentive Auction, including the following:

- *Balances Statutory Goals of Spectrum Growth and Promoting Competition.* In implementing rules for the Incentive Auction, the Commission is bound by dual sets of statutory goals. The proposed auction model satisfies both sets of goals.

In the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”), Congress requires that prior to closing the Incentive Auction, the “forward auction generate proceeds sufficient to pay successful bidders in the reverse auction, cover the Commission’s administrative costs, and cover the estimated costs of reimbursements required by the statute...”⁴ and that any excess revenues be applied toward various other policy objectives such as funding FirstNet.⁵ RWA

³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking, FCC 12-1118 (rel. Oct. 2, 2012) (“*Incentive Auction NPRM*”).

⁴ *Incentive Auction NPRM* at ¶ 69 citing Middle Class Tax Relief and Job Creation Act of 2012, Pub.L.No. 112-96, § 6403(c)(2) (“Spectrum Act”).

⁵ See *Spectrum Act* § 6413.

and NTCA believe the record in this proceeding will show how the Commission could be well positioned to meet these fiscal responsibilities through the MSA phase of the auction, with additional monies brought in through the RSA phase.

In Section 309(j) of the Communications Act of 1934, as amended (“the Act”), Congress mandates the Commission, when designing systems of competitive bidding, to “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...”⁶ as well as “prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, and (ii) economic opportunity for a wide variety of applicants, including small businesses [and] rural telephone companies...”⁷ RWA and NTCA emphasized that bifurcating the auction of metropolitan and rural areas gives small and rural providers a meaningful opportunity to participate in the Incentive Auction and helps the Commission ensure the broad dissemination of licenses among a variety of carriers in accordance with Section 309(j).

- *Preserves Auction and Spectrum Efficiencies.* The RWA/NTCA auction model respects and preserves the Incentive Auction Team’s preference to conduct the reverse and forward auctions and repacking of spectrum on the basis of 176 EAs. The initial phase of the auction would involve the reverse auction, forward auction and repacking. Once this phase is completed, the Commission would conduct a subsequent auction to license the remaining RSAs. Additionally, RWA and NTCA noted that prior concerns regarding CMAs nesting within EAs are unfounded. Only three CMA markets - Monroe, Michigan; Ionia, Michigan; and Strafford, New Hampshire - do not nest cleanly within EA boundaries.

Moreover, RWA and NTCA discussed the fact that their auction model allows EA licensees to meet population-based construction benchmarks by providing service to densely populated urban areas without leaving rural areas unserved. This model facilitates efficient spectrum buildout by providing larger carriers with access to urban areas of EAs and providing rural carriers with licenses small enough to serve strictly rural areas. Indeed, this may be the most important and essential aspect of the RWA/NTCA proposal from a consumer perspective - it would ensure that this valuable spectrum goes to the best possible use for consumers across a wide swath of both rural and urban America, rather than sitting fallow in rural areas while winners of EA-sized licenses neglect the rural portions of those areas to focus (understandably) on build-out of more attractive portions of each EA where a sizeable and densely packed population base sits.

⁶ 47 U.S.C. § 309(j)(3)(B).

⁷ 47 U.S.C. § 309(j)(4)(C).

- *Satisfies Fiscal Objectives of Incentive Auction.* RWA and NTCA anticipate that the record in this proceeding will ultimately show that the Commission's fiscal responsibilities for the Incentive Auction, including meeting broadcaster bids and covering auction costs, can be met during the initial phase of bidding in this auction model. Any supplemental revenues from the first bidding phase could then be used to advance the Commission's key policy goals such as the funding of FirstNet. If, however, the first phase of the auction did not meet the Commission's fiscal requirements, the Commission would have a further opportunity to meet these requirements through the second auction. The FCC could keep the first auction open, giving parties an opportunity to place sufficiently high bids on the RSAs to meet the Commission's fiscal requirements and key policy goals.
- *Promotes Economic Growth in Rural America.* The RWA/NTCA auction model will ensure the deployment of new services to rural America as required by Section 309(j) of the Act. This spectrum is particularly well suited for use in rural area and will provide vital reliable and robust broadband wireless services that support unserved and underserved areas in rural America. Moreover, as noted above, structuring the auction in the manner recommended by RWA and NTCA best ensures that the maximum number of consumers - in both urban and rural areas - will realize the benefits of this valuable spectrum. Uses for the spectrum will likely include private in-home use, broadband access for schools and libraries, as well as broadband access by commercial operations such as mining, oil exploration and production, smart farming, and machine-to-machine operations in rural and remote areas.

RWA and NTCA believe this proposal is an elegant and efficient solution to several difficult issues the FCC faces with regard to the Incentive Auction, including: (1) ensuring the spectrum is built-out to benefit both urban and rural consumers; (2) encouraging wireless broadband service deployments in rural areas to assist with farming and ranching as well as bringing natural resources to highly populated urban areas; (3) ensuring that broadcasters are fully compensated; (4) providing funding for FirstNet; (5) meeting the Commission's obligations under Section 309(j) by providing small businesses and rural telephone companies a meaningful opportunity to participate in the auction (EAs are too large and costly for the majority of rural carriers to bid on); ensuring the broad dissemination of licenses among a variety of carriers; and ensuring the deployment of new services to rural America as required by Section 309(j); and (6) providing larger carriers with access to licenses covering urban areas while providing rural carriers with licenses small enough to serve strictly rural areas.

RWA and NTCA support the hard work the Commission continues to put into designing the Incentive Auction. RWA and NTCA believe their auction proposal will help ensure that the greatest number of consumers - urban and rural - have access to the spectrum-based services the 600 MHz spectrum will support by simplifying the auction process and synergizing the needs of larger carriers and smaller carriers. Large carriers will have the opportunity to obtain licenses to serve population-dense urban areas and

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small carriers can focus their efforts on obtaining spectrum covering the rural communities they serve (while not excluding large carriers from participating in the rural area auctions.) The Commission would thus satisfy its Section 309(j) mandate without adding additional complications to the reverse and forward auctions or the repacking of spectrum.

RWA and NTCA respectfully request that the Commission promptly issue a Public Notice seeking comment on the proposal discussed herein.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

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Encl.

cc (via email):

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Michael O'Rielly
Commissioner Ajit Pai
Commissioner Jessica Rosenworcel
Renee R. Gregory
Louis Peraertz
David Goldman
Erin McGrath
Jeffrey Neumann
Blaise Scinto
Jennifer Tomchin
Matthew Hussey
Brett Tarnutz
Gary Epstein
Paul Malmud
Madelaine Maior
John Leibovitz
Courtney Reinhard

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Edward "Smitty" Smith
Martha Stancill
Chris Helzer
Margaret Wiener
Jessica Almond

Exhibit A

On December 4, 2013, Ms. Bennet, Ms. Canfield and Messrs. Woody, Dengel, Woodward, and Silverman met separately with:

Commissioner Mignon Clyburn
Louis Peraertz, Legal Advisor, Office of Commissioner Clyburn;

Commissioner Michael O'Rielly
Erin McGrath, Acting Legal Advisor to Commissioner O'Rielly;

Jeffrey Neumann, Acting Legal Advisor, Office of Commissioner Ajit Pai;

Members of the Incentive Auction Task Force, including:

Blaise Scinto, Chief, Broadband Division, WTB;
Jennifer Tomchin, Deputy Chief, Broadband Division, WTB;
Matthew Hussey, Office of Engineering Technology
Brett Tarnutzer, Asst. Bureau Chief, WTB;
Gary Epstein, Chair of the Incentive Auction Task Force;
Paul Malmud, WTB
Madelaine Maior, WTB.

On December 5, 2013, Ms. Bennet, Ms. Canfield, and Ms. Shostek and Messrs. Woody, Dengel, and Woodward along with, Jeff Mason, Limitless Mobile, met separately with:

David Goldman, Sr. Legal Advisor, Office of Commissioner Jessica Rosenworcel

Renee R. Gregory, Legal Advisor, Office of Chairman Tom Wheeler.

Exhibit B

See attached map.

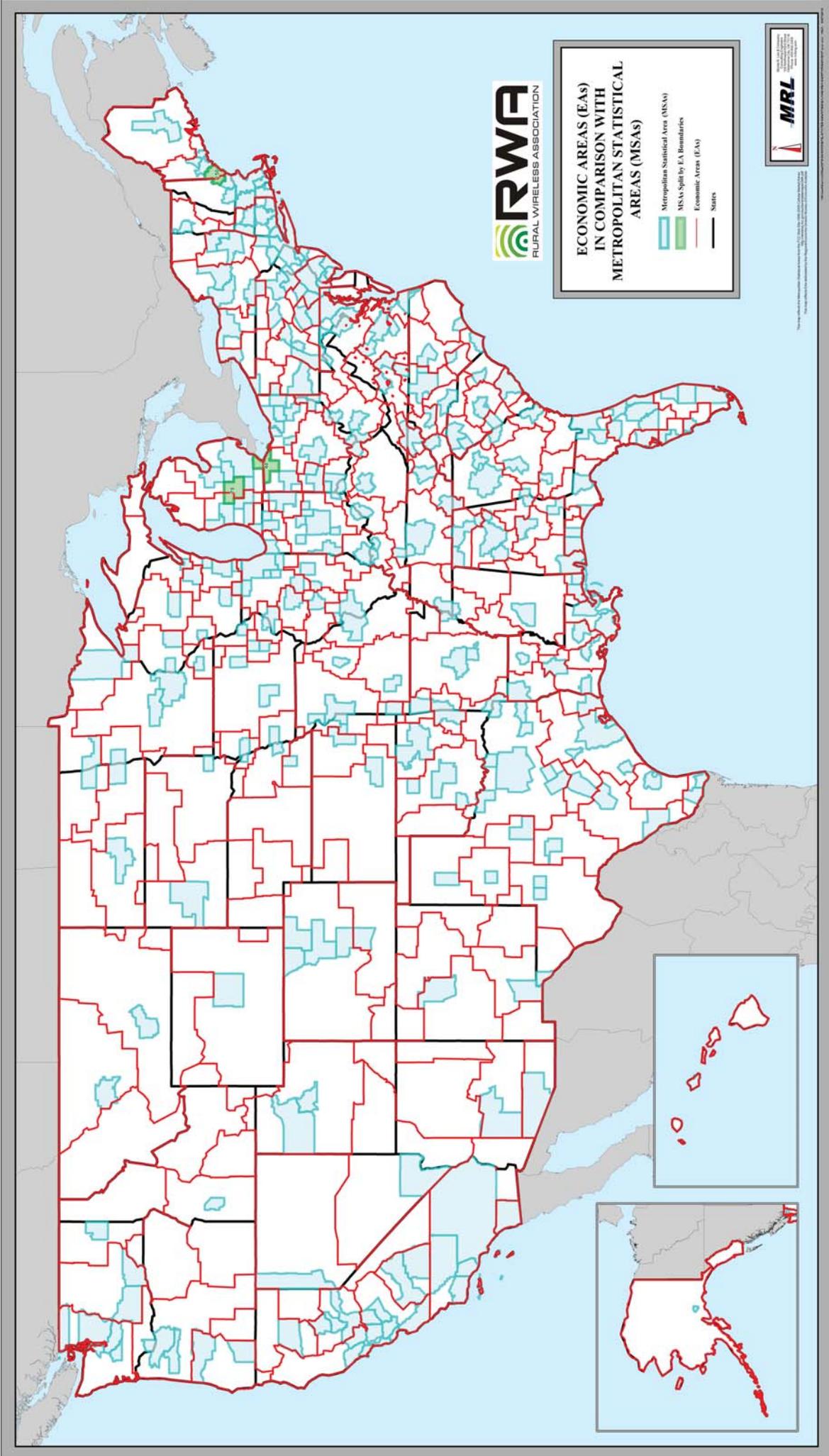
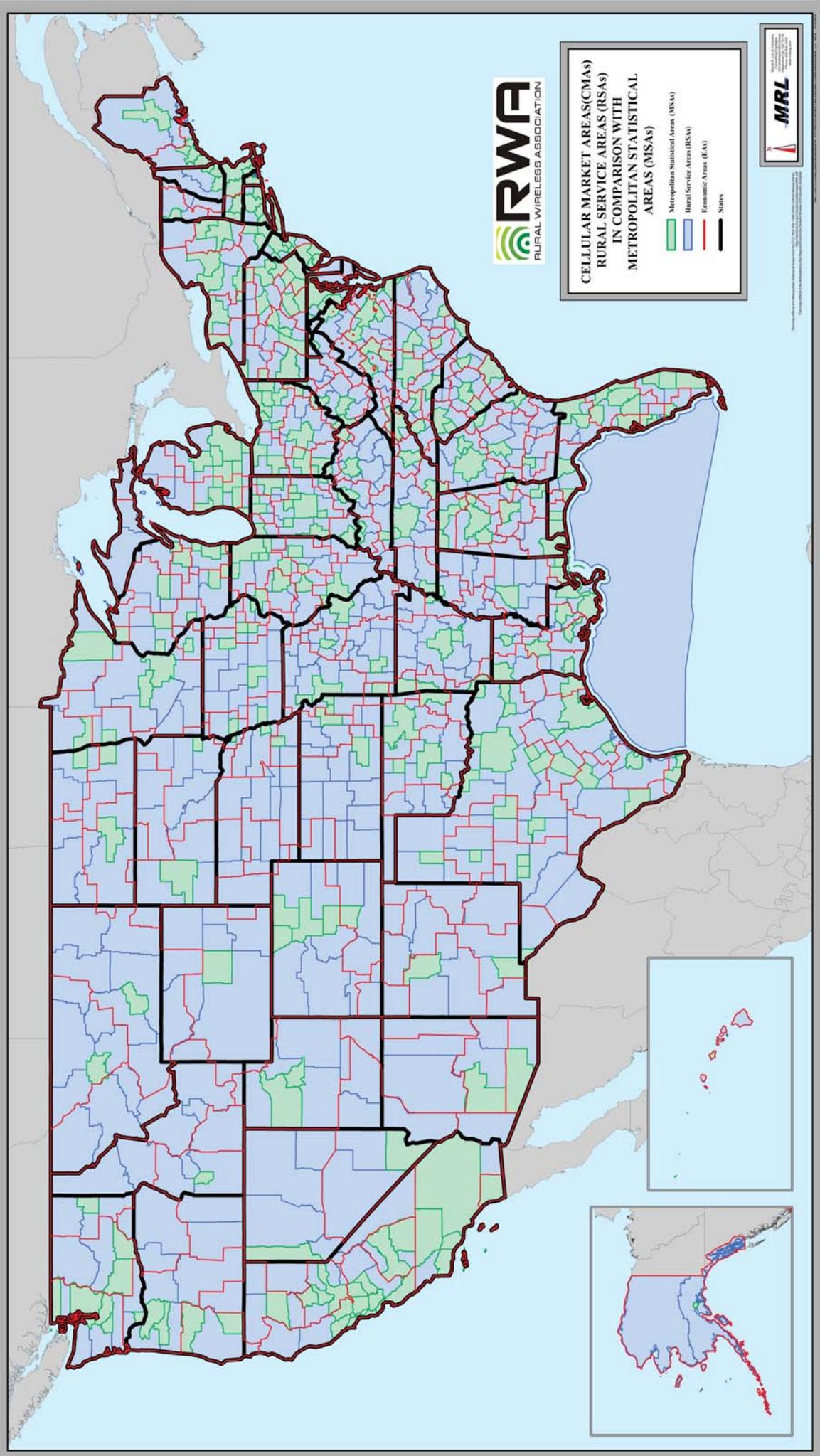


Exhibit C

See attached map.



**CELLULAR MARKET AREAS (CMAs)
RURAL SERVICE AREAS (RSAs)
IN COMPARISON WITH
METROPOLITAN STATISTICAL
AREAS (MSAs)**

- Metropolitan Statistical Areas (MSAs)
- Rural Service Areas (RSAs)
- Economic Areas (EAs)
- States



Map data provided by Esri, DeLorme, NAVTEQ, United States Geological Survey, AeroGRID, IGN, and the GIS User Community