

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Expanding the Economic and Innovation)	GN Docket No. 12-268
Opportunities of Spectrum Through Incentive)	
Auctions)	
)	
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)	

**SUPPLEMENTAL COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION
REGARDING THE USE OF "PARTIAL ECONOMIC AREAS"**

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**SUPPLEMENTAL COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION
REGARDING THE USE OF “PARTIAL ECONOMIC AREAS”**

Competitive Carriers Association (“CCA”) hereby submits these supplemental comments in response to the Public Notice issued by the Wireless Telecommunications Bureau seeking comment on licensing the 600 MHz band using “Partial Economic Areas,” or “PEAs,” as the geographic unit.¹

INTRODUCTION AND SUMMARY

CCA has urged the Commission to select Cellular Market Areas (“CMAs”) as the geographic unit for the upcoming incentive auction.² As CCA recently explained, reliance on CMAs would maximize the participation of small and rural carriers, increase the amount of unencumbered spectrum available for auction, speed deployment of next generation wireless

¹ See *Wireless Telecommunications Bureau Seeks Comment on a Proposal to License the 600 MHz Band Using “Partial Economic Areas,”* Public Notice, GN Docket Nos. 12-268, 13-185 DA 13-2351 (Dec. 11, 2013) (“Public Notice”).

² See, e.g., *Ex Parte* Letter from Steven K. Berry, Competitive Carriers Association, to the Hon. Tom Wheeler, Chairman, Federal Communications Commission, GN Docket No. 12-268 (Nov. 20, 2013) (“CCA November 20 *Ex Parte*”).

products and services to rural America, and likely boost overall auction revenues.³ For these reasons, CCA continues to believe that using CMAs would best serve the public interest in the 600 MHz auction. Nevertheless, to the extent the Commission is unwilling to utilize CMAs—based on concerns about potential challenges in auctioning over 700 individual licenses and the resulting complexity of calculations required of bidders seeking broader geographic coverage—CCA has proposed the use of Partial Economic Areas (“PEAs”) as a compromise measure.⁴ While not as small as CMAs, PEAs would promote many of the benefits of smaller licenses and are strongly preferable to Economic Areas (“EAs”), given the foreclosure risks associated with such larger geographic units. CCA accordingly submits that, while CMAs should remain the “starting point” for licenses in other auctions, the PEA proposal would reasonably balance the competing interests at stake based on the unique nature of the incentive auction.

The Rural Wireless Association (“RWA”) and NTCA – The Rural Broadband Association (“NTCA”) have jointly submitted an alternative proposal, the most salient feature of which would be a bifurcated auction process.⁵ CCA shares RWA/NTCA’s goals of promoting the interests of rural carriers and communities and appreciates their efforts to develop an alternative to EA-based licensing. Unfortunately, the RWA/NTCA plan presents several unintended consequences that make the proposal unworkable. Rather than reducing the

³ *Id.*

⁴ *See Ex Parte* Letter from Rebecca Murphy Thompson, Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268 (filed Nov. 27, 2013) (“CCA November 27 *Ex Parte*”); *see also Ex Parte* Letter from C. Sean Spivey, Competitive Carriers Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268 (filed Dec. 23, 2013) (“CCA December 23 *Ex Parte*”) (providing updated PEA map and related data).

⁵ *See Ex Parte* Letter from Caressa Bennet, Rural Wireless Association, and Jill Canfield, NTCA – The Rural Broadband Association, to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268 (filed Dec. 6, 2013) (“RWA/NCTA Letter”).

complexity of the auction process, the RWA/NTCA proposal to hold two separate forward auctions would result in significantly greater complexity. Instead of improving the prospects of rural carriers, it would demote them to a secondary and uncertain bidding process. And, far from encouraging broadcasters to make more spectrum available (while generating increased revenues), the bifurcated process would create additional disincentives for broadcasters to participate, especially in the rural markets where such participation has seemed most likely. CCA's compromise proposal to use PEAs would more effectively advance the interests of rural carriers and consumers while also addressing the Commission's interest in reducing the complexity of the auction. To the extent reducing the size of particular PEAs west of the Mississippi River would alleviate some of RWA and NTCA's concerns with the proposal,⁶ CCA welcomes the opportunity to work with those organizations, its members, the Commission and other stakeholders towards a consensus-driven product.

DISCUSSION

I. IF THE COMMISSION DECLINES TO USE CMAS, PEAS REPRESENT THE NEXT-BEST OPTION TO PROMOTE THE PUBLIC INTEREST WHILE REDUCING THE COMPLEXITY OF THE INCENTIVE AUCTION

CCA previously has explained the many benefits that would flow from using CMAs as the geographic license size for the incentive auction. Most recently, CCA submitted an economic study demonstrating that smaller license sizes such as CMAs would maximize opportunities for participation by small, midsize, and rural carriers, many of whom otherwise

⁶ See *Ex Parte* Letter from Caressa Bennet, Rural Wireless Association, to Marlene H. Dortch, Federal Communications Commission, GN Docket No. 12-268 at 2 (filed Dec. 23, 2013).

might be foreclosed from participating.⁷ In particular, licensing spectrum at a relatively granular geographic level would enable rural carriers to participate without being forced to bid on large geographic areas that they cannot efficiently serve, while still allowing larger carriers to acquire larger swaths of spectrum, including nationwide spectrum.⁸ Smaller licenses also would increase the Commission's ability to map the recovered broadcast spectrum efficiently and would reduce the amount of spectrum lost to international border coordination, resulting in more unencumbered spectrum being available for auction.⁹ By expanding carrier participation and increasing the amount of unencumbered spectrum available, the use of smaller licenses likely would boost auction revenues.¹⁰ Taking all these considerations into account, CCA believes that the optimal geographic license size is CMAs, because they would maximize the relevant benefits and are familiar to industry participants based on their use in prior auctions.

If the Commission nevertheless is unwilling to use CMAs, the Commission at least should seek to retain some of the benefits of using smaller license sizes, particularly licenses that are smaller than EAs. CCA appreciates that the incentive auction, with its forward and reverse phases and potential variability across geographic areas, presents unique complexities not encountered in previous auctions. Secondly, CCA also understands the interest of larger carriers and the Commission in auctioning a smaller number of licenses than the 700-plus CMAs. In the spirit of compromise, CCA has offered the alternative PEA proposal for the incentive auction.

⁷ See William Lehr and J. Armand Musey, "Right-sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction," ("Lehr/Musey Study"), attached to CCA November 20 *Ex Parte*.

⁸ Lehr/Musey Study at 15-21.

⁹ *Id.* at 14-15.

¹⁰ *Id.* at 22-25.

The PEA proposal is intended to address concerns regarding the unusual complexity of this particular auction while also retaining many of the benefits of small license areas. Specifically, CCA’s compromise proposal divides EAs into PEAs, thereby creating certain licenses within an EA that contain population centers along with other licenses that consist of less populous areas.¹¹ These geographic units would allow carriers that seek to serve rural and other less populous areas to bid on licenses that contain only such areas, without being forced to acquire other geographic areas that they cannot efficiently serve. The Congressional Research Service agrees, noting that PEAs “would allow for a greater choice between urban and rural coverage among bidders for licenses.”¹² Simultaneously, PEAs would allow larger carriers to bid on more populous areas or to bid on multiple licenses to acquire the geographic coverage that they desire. Similar to CMAs, PEAs would substantially increase the likelihood of participation by smaller and rural carriers in the forward auction, as opposed to EAs. This increased activity in the auction room should not only speed deployment of advanced wireless products and services to rural consumers (in furtherance of the statutory goals of the Communications Act),¹³ but also lead to higher auction revenues.¹⁴

¹¹ See CCA November 27 *Ex Parte*; CCA December 23 *Ex Parte*.

¹² LINDA K. MOORE, CONG. RESEARCH SERV., SPECTRUM POLICY: PROVISIONS IN THE 2012 SPECTRUM ACT 11 (Dec. 23, 2013).

¹³ See 47 U.S.C. § 309(j)(3)(A):

[I]n specifying eligibility and other characteristics of such licenses . . . the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote . . . 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 . . .*

(emphasis added).

¹⁴ Lehr/Musey Study at 22-25.

Another important benefit of PEAs for purposes of the incentive auction is that PEAs are not an entirely new geographic unit, but rather are based on both EAs and CMAs. The PEAs that CCA has proposed respect CMA boundaries to the extent possible, and thus are consistent with the licenses used in numerous previous auctions, including Auctions 73 (700 MHz), 78 (AWS-1), and 92 (Lower 700 MHz). PEAs also “nest” fully within existing EAs, which will allow the Commission to map recovered blocks of spectrum efficiently based on potential market variation, and to perform the complex calculations necessary to implement the auction. Finally, PEAs reduce the total number of licenses by nearly 50 percent—from over 700 CMAs to approximately 390 PEAs—thereby helping to reduce the unprecedented complexity of the incentive auction.

In short, while CCA continues to support the use of CMAs, PEAs represent a next-best option that preserves many of the benefits of smaller license sizes while reducing the complexity presented by the unique circumstances of the incentive auction. PEAs would promote participation by smaller and rural carriers and deployment of services to rural and underserved Americans, while increasing auction revenues; and PEAs also nest fully within EAs and result in fewer calculations than CMAs in order to mitigate the complexity of the auction procedures. CCA therefore believes that PEAs represent a reasonable balancing of the various interests at stake and would be far preferable to using EAs alone.

While PEAs represent a viable approach in the unique circumstances of the 600 MHz auction, the Commission should not broadly endorse the use of PEAs for other auctions. CCA continues to believe that the record establishes that CMAs are the ideal geographic unit to promote participation by rural carriers and, accordingly, to promote the interests of rural communities. CCA has proposed PEAs as a compromise given the extreme complexity

presented by the incentive auction, but other auctions on the horizon do not present comparable circumstances. Absent similar challenges, CMAs almost certainly will maximize the relevant benefits—including promoting competition among and broad participation by carriers, increasing the efficient allocation of spectrum, and further increasing auction revenues—and would far outweigh any generalized interest in auctioning a smaller number of licenses.

With respect to larger carriers' desire to bid on packages of licenses, CCA is concerned that package bidding can result in significant competitive harm. Excessive reliance on package bidding would bias the auction in favor of larger carriers that have greater resources to manage the complexity entailed by such a process.¹⁵ Moreover, packages create opportunities for larger carriers to game the system by packaging highly desirable licenses and thereby shielding from other bidders the true value that they ascribe to those licenses. Packages also can lead to foreclosure because smaller carriers might be unable to bid on a package of licenses, even if they would have bid on certain individual components of the package. In its Public Notice establishing auction procedures for the upcoming H Block auction, the Wireless Bureau likewise noted that most commenting parties opposed any form of package bidding for Auction 96.¹⁶ Commenters cited several reasons for opposing package bidding, including the complexity it would add to the auction, the advantages it would bestow on the larger, incumbent carriers, the

¹⁵ See CCA November 27 *Ex Parte* at 2; Comments of Competitive Carriers Association, GN Docket No. 12-268, at 18 (filed Jan. 25, 2013).

¹⁶ See *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014, Notice and Filing Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 96*, Public Notice, AU Docket No. 13-178, 28 FCC Rcd 13019, 13053 ¶ 131 (Sept. 13, 2013).

discount it could place on certain licenses, and the uncertainty it could cause for bidders in the auction.¹⁷

CCA nevertheless recognizes that larger carriers may have an interest in obtaining spectrum in the most densely populated parts of the country. To minimize the potential harms of package bidding, the Commission should ensure that—if *any* package bidding is utilized—a package consist of no more than the ten largest PEAs by population.¹⁸ By CCA’s calculation, the ten largest PEA markets by population account for almost 30 percent of the population of the United States, a significant number of POPs. AT&T’s proposal to package the top 100 markets (at a minimum, and as an alternative to creating a *nationwide* package)¹⁹ would be much more detrimental to rural and regional carriers, as a package of this size would engulf well over 70 percent of US POPs. Therefore, a limited package of no more than the top 10 PEA markets would enable larger carriers to obtain a collection of major population centers with a significant population base, while minimizing the potential foreclosure risks of package bidding.

II. THE PEA PROPOSAL BALANCES THE COMPETING INTERESTS BETTER THAN THE RWA/NTCA PROPOSAL, AND PRODUCES SUPERIOR POLICY OUTCOMES

As noted above, RWA and NTCA jointly submitted an alternative proposal, under which the Commission would conduct a bifurcated auction proceeding.²⁰ RWA and NTCA would retain CMAs as the geographic unit, but they propose that the Commission first conduct the reverse auction and an initial forward auction of licenses on the basis of Metropolitan Statistical

¹⁷ *Id.* at 13054, ¶ 132.

¹⁸ CCA November 27 *Ex Parte* at 2.

¹⁹ *See Ex Parte* Letter from Joan Marsh, AT&T Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, GN Docket No. 12-268 at 3 (filed Dec. 3, 2013).

²⁰ *See* RWA/NCTA Letter.

Areas (“MSAs”), and then conduct a second forward auction of Rural Service Areas (“RSAs”) at some unspecified point in the future.²¹ In RWA/NTCA’s view, national and large regional carriers are likely to compete in the first round, while small and rural carriers along with large carriers interested in expanding their coverage would then bid in the subsequent round.²²

CCA appreciates the efforts of RWA and NTCA to offer an alternative proposal for the Commission’s consideration, and CCA shares those organizations’ goals of promoting the interests of rural carriers and consumers. RWA and NTCA correctly point out that wireless broadband service deployments in rural areas will help assist with important farming and ranching needs and with bringing natural resources to highly populated urban areas, and that access to low-band spectrum is a requirement for achieving such endeavors.²³ But despite their good intentions, RWA and NTCA’s proposal raises significant concerns and could lead to sub-optimal outcomes, and indeed could threaten to undermine the interests of rural carriers and their subscribers.

As an initial matter, the proposal to conduct two separate forward auctions is inconsistent with the legislative intent of the Spectrum Act, which envisions a single forward auction.²⁴ If Congress had intended for the Commission to conduct multiple forward auctions, it presumably would have said so. Acting outside of the perceived legislative intent of the Spectrum Act increases the risk of miring the auction process in years of unnecessary litigation,

²¹ *Id.* at 2.

²² *Id.*

²³ RWA/NTCA Letter at 4.

²⁴ See Middle Class Tax Relief and Job Creation Act of 2012, P.L. 112-96, 126 Stat. 156 § 6402(c)(1) (Feb. 22, 2012) (“The Commission shall conduct a forward auction...”); *id.* § 6402(c)(2) (discussing proceeds and costs from “the forward auction”).

which, at a minimum, would significantly delay the deployment of next generation products and services to consumers.

But even assuming the Commission is ultimately found to have the authority to bifurcate the auction process as RWA/NTCA propose, doing so is not the best way to advance the relevant policy interests at stake. Most significantly, the RWA/NTCA proposal relegates rural carriers and their subscribers to second-class citizenship by forcing them to wait for a secondary process—at some uncertain future point—which would occur only after the largest carriers have acquired their preferred licenses. The RWA/NTCA proposal does not involve any set-asides for rural carriers, and they concede that larger carriers might well continue to bid in the second round.²⁵ In other words, smaller and rural carriers would be able to obtain 600 MHz licenses only after larger carriers have had a first bite at the apple, and without any assurance of increased access to spectrum. Thus, the only certainty entailed by the RWA/NTCA proposal (and even this is somewhat unclear)²⁶ would be that smaller carriers would have to wait some additional number of months—and possibly *years*—before they could acquire 600 MHz spectrum. Substantially delaying access to beachfront spectrum in rural areas would not only be in direct contravention of several provisions of the Communications Act,²⁷ but would also exacerbate the

²⁵ RWA/NTCA Proposal at 2, 4.

²⁶ On the one hand, RWA and NTCA first claim that “the initial phase of the auction would involve the reverse auction, forward auction and repacking,” and that “once this phase is completed, the Commission would conduct a subsequent auction to license the remaining RSAs.” RWA/NTCA Proposal at 3. On the other hand (and perhaps realizing the interdependent nature of the reverse auction, the repacking and the forward auction), RWA and NTCA later argue that “if, however, the first phase of the auction did not meet the Commission’s fiscal requirements . . . [t]he 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.” RWA/NTCA Proposal at 4.

²⁷ 47 U.S.C. §§ 309(j)(3)(A), 309(j)(4)(C).

competitive problems besetting the wireless industry.²⁸ Likewise, the RWA/NTCA proposal would disadvantage mid-size carriers and the larger competitors that seek to expand their geographic coverage. For such carriers, the bifurcated process would make it far more challenging to aggregate licenses, because the more populous and less populous license areas would be divided into entirely separate proceedings, with an uncertain time interval between them. The simultaneous forward auction of all PEAs would be far more predictable and more competitively neutral.

A bifurcated process also would likely reduce auction revenues. As CCA has demonstrated, maximizing participation is critical to maximizing auction revenues not only for those licenses competitive carriers ultimately acquire, but also for those licenses that competitive carriers *seek to acquire*, though ultimately don't.²⁹ And maximizing participation requires ensuring that all carriers have a reasonable opportunity to bid for all licenses, most notably by employing appropriate spectrum aggregation limits and small geographic licenses sizes. But the RWA/NTCA proposal would all but ensure that a significant number of carriers would be absent from each portion of the process—indeed, that appears to be its express aim—thereby reducing competition and total auction revenues. At the same time, the RWA/NTCA proposal implies that rural licenses are effectively worthless, based on those parties' suggestion that the fiscal aims of

²⁸ See Competitive Carriers Association, “A Framework for Sustainable Competition in the Digital Age: Fostering Connectivity, Innovation, and Consumer Choice,” GN Docket No. 12-268 (filed Dec. 4, 2013) (documenting the tremendous increase in consolidation and spectrum aggregation in the wireless industry and the impact of such developments on competitive carriers' ability to obtain the spectrum and access to devices and networks necessary to challenge the emerging duopoly).

²⁹ See Lehr/Musey Study at 22-24.

the incentive auction would be entirely satisfied by the MSA portion of the process.³⁰ CCA emphatically disagrees, and believes that participation by rural carriers in fact is critical to the Commission's ability to achieve its financial goals (in addition to other public interest objectives), consistent with the economic evidence in the record.³¹

In addition, the RWA/NTCA proposal, with its uncertain timing and potential delays, would make it even more challenging to attract broadcaster participation in the auction. Broadcasters have repeatedly warned that one key to promoting their participation is implementing a simple, predictable auction process.³² Yet the RWA/NTCA plan would substantially increase the level of uncertainty for broadcasters by introducing a bifurcated process with uncertain timing. It will be challenging enough to persuade broadcasters to relinquish their spectrum, but all the more difficult if the ability to close the auction requires multiple bidders in multiple auctions. Moreover, RWA and NTCA fail to fully explain how the repacking can be completed in the first phase of the auction, when there is no guarantee that the

³⁰ RWA/NTCA Proposal at 4 (arguing 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.”); *see also* National Economic Research Associates, Inc., “Local and Regional Licensing for the US 600 MHz Band (Incentive Auction)” at 45 (“NERA Study”), attached to *Ex Parte* Letter from Richard Marsden, Vice President, NERA to Marlene H. Dortch, FCC, GN Docket Nos. 12-268, 13-185 (filed Jan. 7, 2014) (“As the First Phase Forward Auction is the one that matters in terms of determining the success of the Incentive Auction, this approach essentially de-risks the implementation process.”).

³¹ *See* Lehr/Musey Study at 22-24.

³² *See, e.g.*, Comments of Expanding Opportunities for Broadcast Coalition, GN Docket No. 12-268 at ii (Jan. 23, 2012) (urging the Commission to adopt “simple” procedures and not to “overcomplicat[e] the auction with myriad bidding options”); Statement of Rick Kaplan, National Association of Broadcasters, Hearing on “Crafting a Successful Incentive Auction: Stakeholders’ Perspectives,” U.S. Senate Committee on Commerce, Science, and Transportation at 3 (Dec. 10, 2013) (“the FCC should make it as simple as possible to participate in the auction”), *available at*: <http://tinyurl.com/mn4l3vc>.

revenues from the MSA auction phase will be enough to meet the financial targets for clearing existing broadcasters from the airwaves.³³

Another concern for broadcasters is that it would be impossible for the Commission to announce initial pricing for RSAs under the RWA/NTCA proposal because the demand for, and valuation of, such licenses would depend in large part on the results of the initial MSA auction process. This is important as one broadcaster coalition recently commented that a critical prerequisite to attracting broadcaster participation is for the Commission to announce initial auction pricing as soon as possible.³⁴ Thus, under the RWA/NTCA plan broadcasters would remain in the dark with respect to pricing for an extended period of time. And to the extent that rural broadcasters are the most likely contributors of spectrum for the forward auction(s), this uncertainty regarding the valuation of their licenses would be even more damaging to the auction process.

Finally, the RWA/NTCA proposal would do nothing to reduce the complexity of the calculations necessary to implement the incentive auction. CCA understands that one of the Commission's concerns with CMAs is the large number of licenses and the attendant complexity of calculations necessary to employ CMAs in the forward auction. CCA's PEA proposal accordingly sought to balance two potentially competing interests: (1) promoting opportunities for smaller and rural carriers, *and* (2) reducing the total number of licenses in order to mitigate the complexities that the Commission must manage. In contrast, the RWA/NTCA proposal

³³ Indeed, this issue is recognized in the NERA Study. *See* NERA Study at 37 (recognizing that “the revenues from the Second Phase Forward Auction would not be realized until after the supply scenario is determined, and could therefore not be taken into account specifically in the determination of whether a particular scenario is viable.”).

³⁴ *See Ex Parte* Letter from Ari Meltzer, Counsel to Expanding Opportunities for Broadcasters Coalition, to Marlene H. Dortch, FCC, GN Docket No. 12-268 (filed Dec. 11, 2013).

would do nothing to address the latter issue. If the Commission is willing to use CMAs, it should employ them in a single forward auction so that smaller and rural carriers can compete on the same terms as larger carriers; if it is not willing to use CMAs due to the large number of licenses, then the RWA/NTCA proposal is a non-starter.

Ultimately, CCA shares RWA/NTCA's goals of promoting participation by smaller and rural carriers and advancing the interests of rural communities. But the critical question is how to balance those interests against the Commission's desire to reduce complexity by having fewer licenses. CCA's proposal appropriately balances those competing objectives, while the RWA/NTCA proposal fails to adequately address concerns about complexity and could have the unintended consequence of undercutting rural carriers' ability to compete.

CONCLUSION

For the foregoing reasons, CCA continues to support the use of CMAs as the geographic unit for the forward auction, but if the Commission declines to do so, PEAs are the next-best option to promote participation by rural carriers and to further the public interest more generally. CCA welcomes the opportunity to work with all interested stakeholders in improving upon the PEA boundaries proposed in the record, to maximize participation in the forward auction process.

Respectfully submitted,

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