

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

In the Matter of)	
)	
Expanding the Economic and Innovation)	
Opportunities of Spectrum Through Incentive)	
Auctions)	GN Docket No. 12-268
)	
Amendment of the Commission’s Rules with)	
Regard To Commercial Operations in the)	
1695-1710 MHz, 1755-1 780 MHz and)	
2155–2180 MHz Bands)	GN Docket No. 13-185

**COMMENTS OF
THE RURAL WIRELESS ASSOCIATION, INC.
AND NTCA - THE RURAL BROADBAND ASSOCIATION**

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Summary

The Rural Wireless Association, Inc. (“RWA”) and NTCA - the Rural Broadband Association (“NTCA”) (collectively the “Associations”) file these joint Comments in response to the request of the Wireless Telecommunications Bureau (“WTB”) of the Federal Communications Commission (“FCC” or “Commission”) seeking comment on a proposal by the Competitive Carrier Association (“CCA”) to license the 600 MHz Band using Partial Economic Areas (“PEAs”) as well as other new geographic licensing proposals, such as the joint proposal submitted by RWA and NTCA on December 6, 2013 and further developed by NERA Economic Consulting in a report commissioned by the Associations.

While the Commission has proposed to auction the 600 MHz spectrum on the basis of Economic Areas (“EAs”), the record clearly shows that EAs are too large to ensure the meaningful participation by small businesses and rural carriers in the Incentive Auction, which violates the statutory mandates of Section 309(j) of the Communications Act of 1934, as amended. The Commission must adopt smaller geographic areas, such as Cellular Market Areas (“CMAs”), to allow small businesses and rural carriers to participate in the auction, and the Commission cannot reasonably rely on secondary markets to ensure that rural carriers have access to 600 MHz spectrum. While licensing the 600 MHz band on the basis of PEAs is preferred over EAs, the currently proposed PEAs are still too large to accommodate the Associations’ members in certain areas, particularly west of the Mississippi River, and the Commission will likely face individual carrier petitions seeking PEA modifications to fit carriers’ individual service contours.

The Associations also note that there is no evidence in the record establishing that CMAs would increase auction implementation risks, and the NERA Report finds that there is no maximum on the number of licenses that could be sold using the FCC's design for the Forward Auction, and that the auction, which is designed to cope with 176 regions, could work equally well with many more regions.

The NERA Report elaborates on the RWA/NTCA proposal which proposes a two-phase Incentive Auction framework that would allow the Commission to conduct the reverse broadcast auction, spectrum repacking, and a First Phase Forward Auction on the basis of 176 EAs, but award licenses on the basis of Metropolitan Statistical Areas ("MSAs") and Rural Service Areas ("RSAs"), which are collectively known as CMAs. This auction framework mitigates concerns expressed by some large carriers regarding aggregation risks by allowing carriers to bid and secure licenses for major metropolitan areas before bidding on licenses for surrounding areas, thereby eliminating the risk that a carrier would be stuck with RSA licenses without also winning licenses for the surrounding MSA(s). The RWA/NTCA Proposal also satisfies the Commission's desire to conduct the reverse and Forward auctions on the basis of 176 EA lots and provides rural carriers and small businesses with a meaningful opportunity to participate in the Incentive Auction, consistent with the Commission's Section 309(j) statutory mandate.

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To: The Wireless Telecommunications Bureau

**COMMENTS OF
THE RURAL WIRELESS ASSOCIATION, INC.
AND NTCA - THE RURAL BROADBAND ASSOCIATION**

The Rural Wireless Association, Inc. (“RWA”)¹ and NTCA - the Rural Broadband Association (“NTCA”)² (collectively “the Associations”) hereby file these joint comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Wireless Telecommunications Bureau’s *PEA Public Notice*³ seeking comments on a proposal to license the 600 MHz Band using Partial Economic Areas (“PEAs”) as well as other new geographic licensing proposals. While the Associations support the Commission’s proposal to adopt a

¹ The Rural Wireless Association, Inc. is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural wireless 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.

³ *Wireless Telecommunications Bureau Seeks Comment on a Proposal to License the 600 MHz Band Using “Partial Economic Areas,”* GN Docket Nos. 12-268 and 13-185, Public Notice, DA 13-2351 (WTB, Dec. 11, 2013) (“*PEA Public Notice*”).

geographic licensing approach for the 600 MHz band and support the use of geographic license areas smaller than Economic Areas (“EAs”), the Associations remain concerned about the use of the specific PEA approach as originally proposed or as amended on December 23, 2013, because the size of certain of those geographic license areas, particularly in rural areas west of the Mississippi River, would make it difficult if not impossible for many smaller or regional competitive providers to participate in the Incentive Auction.

I. BACKGROUND.

The Commission has the difficult task of conducting the first-ever Incentive Auction, which involves a three-part interdependent auction process involving: (1) a Reverse Broadcast Auction to determine the compensation broadcasters require to give up their spectrum rights; (2) Spectrum Repacking, which will shuffle those broadcasters who decide to remain on the air to a smaller portion of the UHF band to create clear contiguous blocks of 600 MHz spectrum; and (3) a Forward Auction, which will award cleared 600 MHz spectrum licenses to the highest bidder for flexible use.

The Commission initially proposed to conduct the Forward Auction on the basis of the 176 EAs, tentatively concluding that “EA licensing strikes an appropriate balance between geographic granularity from a spectrum reclamation standpoint and having a manageable number of licenses from an auction design standpoint.”⁴ However, many small and rural carriers have since filed comments showing adoption of EA based geographic licensing will result in their inability to participate in the auction and urging the Commission to adopt Cellular Market Area

⁴ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, FCC 12-118 at ¶ 148 (rel. October, 2, 2012) (“*Incentive Auction NPRM*”).

("CMA") based geographic area licensing.⁵ The Competitive Carriers Association ("CCA"), in an apparent attempt to address concerns about the complexity of the auction while seeking more granular license areas, proposed an alternative licensing scheme with new smaller license areas called PEAs.⁶ There are 176 EAs and 734 CMAs. PEAs appear to be a subdivision of EAs based to some degree on CMA boundaries. CCA originally proposed 351 PEAs. CCA subsequently revised the proposed PEA boundaries to further identify an additional 39 PEA areas, increasing the current number of PEAs proposed by CCA to 390.⁷

The Associations appreciate CCA's attempt to respond to concerns about CMA based geographic licensing in the Forward Auction. CCA clearly recognizes that ensuring greater participation by carriers of all sizes in the Forward Auction will be essential to its success, and the Associations believes that the PEA approach could be a useful construct to consider in

⁵ Letter from David LaFuria, Counsel for N.E. Colorado Cellular, Inc. d/b/a Viaero Wireless to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 at p. 6 (filed December 9, 2013) ("Viaero Ex Parte") ("...if the Commission selects EAs as the basis for 600 MHz licensing, Viaero would be closed out from competing for the spectrum in its service area."); 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.") ("Bluegrass Letter"); 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) ("Plateau Letter"); 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) ("Northwest Missouri Letter"); Letter from Gregory W. Whiteaker, Counsel for Chat Mobility to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Aug. 8, 2013) ("Chat Mobility Letter"); *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.") ("US Cellular Letter").

⁶ Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC (Nov. 27, 2013) ("CCA PEA Ex Parte").

⁷ Letter from C. Sean Spivey, Competitive Carrier Association, to Marlene Dortch, Secretary, FCC (Dec. 23, 2013) ("CCA Revised PEA Ex Parte").

achieving greater participation. As discussed more fully below, however, certain of the geographic areas included in the PEAs in the CCA filing, particularly those west of the Mississippi, still appear too large to allow many of the Associations' members and other smaller local and regional rural providers to participate in the auction in its current form. However, there is another proposal before the Commission that would help to remedy this concern while still working within the fundamental PEA construct. Specifically, the joint proposal submitted by the Associations⁸ responds to the Commission's desire to reduce implementation risks by limiting the number of bidding lots in the Forward and reverse auctions, while also making it more plausible for small businesses and rural carriers *across the country* to bid on smaller geographic license areas.

II. SECTION 309(j) REQUIRES THE COMMISSION TO ADOPT AN INCENTIVE AUCTION DESIGN THAT ENSURES SMALL BUSINESS AND RURAL CARRIER PARTICIPATION IN THE AUCTION.

When prescribing regulations for awarding licenses for new services through competitive bidding, the Commission must meet the Congressional mandates articulated in Section 309(j) of the Communications Act of 1934, as amended ("the Act"). Specifically, Section 309(j)(3) mandates 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")⁹ 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*

⁸ Letter from Caressa Bennet, Rural Wireless Association, Inc., and Jill Canfield, NTCA - The Rural Broadband Association to Marlene Dortch, Secretary, FCC (Dec. 6, 2013) ("RWA/NTCA Proposal").

⁹ 47 U.S.C. § 151 (emphasis added).

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.*¹⁰

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.*¹¹

The Commission must consider these requirements when adopting regulations for the award of new service licenses through competitive bidding. When it tentatively concluded that EAs are an appropriate middle ground, the Commission failed to sufficiently consider Section 309(j) and the impact these large geographic area licenses would have on small business and rural carrier participation in the auction.

As explained by many commenters in this proceeding, adoption of EA-based geographic area licensing will result in the inability of many small businesses and rural carriers to participate

¹⁰ 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*”).

¹¹ 47 U.S.C. §§ 309(j)(4)(B)-(C) (emphasis added).

in the auction.¹² The adoption of EA-based licenses will therefore fail to meet the Congressional mandates of Sections 309(j)(3)(A) and (B) and Sections 309(j)(4)(B) and (C) which require the Commission to adopt auction and service rules and license sizes and bandwidth assignments that, among others, (1) ensure the timely deployment of new services to people residing in rural areas; (2) promote economic opportunity and competition, ensure new technologies are readily available to the public by avoiding the excessive concentration of licenses and disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies; (3) prevent stockpiling or warehousing of spectrum; and (4) promote an equitable distribution of licenses among different geographic areas and promote economic opportunities for small businesses and rural carriers. Only by adopting geographic areas sufficiently small to accommodate small business and rural carrier participation in the auction can the Commission satisfy the congressional mandates of Section 309(j).

III. RIGHT-SIZING THE LICENSES IS OF PARAMOUNT CONCERN TO AUCTION PARTICIPANTS.

The Associations recently commissioned NERA Economic Consulting (“NERA”) to prepare a report exploring the use of smaller geographic area licenses, such as CMAs, in the Incentive Auction.¹³ The NERA report finds that there are risks and benefits to adopting CMAs, but ultimately concludes that the risks remain largely the same under both EA-based licensing and licensing based on smaller license areas such as CMAs or modified PEAs, while the potential for excluding local operators is strong with the adoption of EA licensing.

¹² See generally Viaero Ex Parte, Bluegrass Letter, RWA Ex Parte, NTCA Ex Parte, Plateau Letter, Northwest Missouri Letter, Chat Mobility Letter, and US Cellular Letter.

¹³ Richard Marsden, Dr. Chantale LaCasse, and Jonathan Pike, *Local and Regional Licensing for the US 600 MHz Band (Incentive Auction)* (January 2014) (“NERA Report”).

A report by the Summit Ridge Group discusses the concept of ensuring the geographic sizes of license territories are “right-sized,” which means “ensuring they are sufficiently small to meet the needs of all mobile operators.”¹⁴ Right-sizing the geographic license areas for the 600 MHz band will be key to ensuring a successful Incentive Auction that meets all of the Commission’s statutory obligations. Of particular importance, given the FCC’s Section 309(j) statutory mandate, is to ensure that small businesses and rural carriers have the opportunity to participate in the Incentive Auction, which, as outlined below, can only be accomplished through the adoption of smaller geographic licensing areas. The record in this proceeding has clearly shown that EA licensing is not sufficiently granular to meet rural and other smaller carriers’ needs, and many rural carriers will be precluded from participating in the auction altogether if the Commission adopts EAs. The following examples, which are discussed in greater detail in the NERA Report,¹⁵ show why such carriers cannot participate under an EA framework.

- Bluegrass Cellular (“Bluegrass”) currently provides service to an area with a population of around two million people in rural Kentucky. If the Commission adopts EAs, Bluegrass would need to win four EAs to cover its current service area, which would include *over five million people* and cover Lexington and Richmond, Kentucky; Nashville, Tennessee; and Evansville, Indiana. As Bluegrass has informed the Commission, it “...*does not have the financial*

¹⁴ William Lehr and J. Armand Musey, *Right-sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction*, (Nov. 20, 2013) (“Summit Study”).

¹⁵ NERA Report at pp. 14-15.

*wherewithal to bid on four or five separate EAs encompassing five times the number of pops it currently serves.”*¹⁶

- Leaco Rural Telephone Cooperative, Inc. (“Leaco”) currently provides service to an area with a population of less than one million people in the Southwest. In order to obtain 600 MHz licenses covering its current service territory, Leaco would need to bid on spectrum covering seven EAs, with a reported population of *32 million people*, including Los Angeles, California and Dallas, Texas.¹⁷
- NEP Wireless, Inc. (“NEP”) provides service to a population of approximately 300,000 people in rural northeastern Pennsylvania and rural New York. In order to obtain 600 MHz licenses covering its current service territory, NEP would need to bid on two EAs (with a total population of *more than 28 million people*) including New York City and counties in Connecticut, Massachusetts, New Jersey, New York, Pennsylvania and Vermont. If the Commission adopted CMAs, NEP could cover 95% of its existing service territory by winning licenses covering two CMAs.¹⁸
- Pinpoint Wireless, Inc. (“Pinpoint”) provides service to a handful of counties in rural southern Nebraska and Kansas with a population of less than 40,000 people. With EA-based licensing, Pinpoint would need to win four EAs covering a population of *more than six million people*, spread across four states. If the

¹⁶ Bluegrass Letter at p. 1.

¹⁷ NERA Report at p. 14.

¹⁸ NERA Report at p. 14-15.

Commission adopted CMA-based licensing, Pinpoint would only need to win two RSAs to cover its existing footprint.¹⁹

- Union Wireless (“Union”) currently provides service to an area with a population of approximately two million people in Wyoming and adjacent states. To obtain spectrum covering its current service territory, Union would have to bid on 10 EAs covering *10 million people*.²⁰

PEA license areas are closer to CMAs than to EA license areas in accommodating the needs of rural carriers and their customers, and thus the PEA construct could hold promise in helping to resolve concerns about the lack of participation by smaller carriers in the auction. However, as discussed below, the PEAs currently proposed are still, in certain cases, too large for many of the Associations’ members. As a result, small and rural carriers will undoubtedly petition the Commission asking that individual PEAs be modified to accommodate their smaller service areas. While CMAs, MSAs, RSAs, and EAs are based on the work of the Commerce Department’s Bureau of Economic Analysis which used several statistical factors including but not limited to population and county boundaries,²¹ PEAs appear to have been drawn based loosely on EA and CMA boundaries, but there is no clearly explained driver behind any given PEA boundary as currently proposed. Because the proposed PEA boundaries are tentative and continue to be in flux, before the Commission can adopt them, it will need to finalize and seek public comment on *specific proposed boundaries*. As explained in the NERA Report, in order for the FCC to define a new PEA geographic tier level based on an analysis of likely demand at

¹⁹ NERA Report at p. 15.

²⁰ NERA Report at p. 15.

²¹ *See generally* NERA Report at p. 5.

the CMA and EA levels, the FCC will need to first identify “default rules for the new license structure that it would implement absent firm evidence that an alternative approach for a CMA or group of CMAs offers benefits” and offer stakeholders the opportunity to petition for variations to these rules.²² As a simple matter of efficiency, the Commission should therefore consider *in advance* how to achieve the best possible balance using the PEA construct to obtain truly “right-sized” license areas, rather than needing to address such concerns “on the back end” through the cumbersome and rather challenging effort of disposing of individualized petitions based on no clear standard.

IV. THE JOINT PROPOSAL SET FORTH IN THE NERA REPORT ALLOWS THE COMMISSION TO LIMIT THE NUMBER OF LICENSES SUBJECT TO THE REVERSE BROADCAST AUCTION AND ALLOWS RURAL CARRIERS TO OBTAIN RIGHT-SIZED LICENSES WITHOUT PETITIONING THE COMMISSION.

A two-phase Incentive Auction framework, as described in the NERA Report, would allow the Commission to conduct the reverse broadcast auction, spectrum repacking, and a First Phase Forward Auction on the basis of 176 EAs, but award licenses on the basis of Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”), which are collectively known as CMAs (the “RWA/NTCA Proposal”). Under the proposal, during the first phase of the Incentive Auction, the Commission would conduct the reverse broadcast auction contemporaneously with the First Phase Forward Auction during which Forward Auction bidders would bid on the basis of EAs, but would receive licenses covering only a portion of the EA – specifically, the MSA or MSAs (when there is more than one MSA) located within the EA. A map depicting MSAs and

²² NERA Report at p. 33.

EAs is attached as Exhibit A.²³ Once the First Phase Forward Auction is completed, the FCC would hold a Second Phase Forward Auction, which would be a straight auction and would not involve broadcasters, for the remaining 429 RSAs. A map depicting the remaining RSAs is attached as Exhibit B.

The RSAs, which cover lower population densities, are likely to be pursued by small businesses and rural telephone companies as well as large carriers that are interested in expanding their MSA footprints. The two-phased approach allows the Commission to conduct the reverse auction and forward auction contemporaneously, with only 176 auction lots. This approach also allows the Commission to auction geographically smaller RSA-based licenses, which will allow small businesses and rural carriers to participate in the Incentive Auction.

The Associations believe this proposal is ideal for the Incentive Auction because it enables the Commission to achieve the statutory goals of promptly deploying spectrum based services to rural areas, promoting the meaningful participation of small businesses and rural carriers in the Incentive Auction, disseminating initial licenses to a broad range of carriers, and promoting competition. The Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) also requires the Commission to ensure 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...”²⁴ As outlined by the NERA Report, the Commission will likely

²³ MSAs nest completely within EAs in all but three locations: Monroe, Michigan; Ionia, Michigan and Strafford, New Hampshire, which are depicted in green on Exhibit B.

²⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6403, 125 Stat. 156 (2012) (“Spectrum Act”).

recoup 90% of auction revenues through the First Phase Forward Auction.²⁵ Accordingly, the Commission should meet its Spectrum Act obligations before even beginning the second phase of the auction.

Under this auction framework, small and rural carriers will have a meaningful opportunity to obtain initial licenses through the Incentive Auction without having to rely on obtaining spectrum through secondary markets, which is notoriously time consuming and costly if it happens at all. It is important to note that as outlined by the NERA Report, “it would not make sense for the FCC to rely on the secondary market to address inefficiencies caused by geographic licensing if they could instead be addressed in the primary design. If disaggregated spectrum was sold shortly after the auction, this might imply that the auction design had ‘left money on the table.’”²⁶ Providing small and rural carriers a meaningful opportunity to obtain initial licenses through the Incentive Auction will also ensure that the deployment of services to rural areas will not be unnecessarily delayed.

In addition, this proposal would allow large area licensees to meet population-based construction benchmarks by providing service to densely populated urban areas while ensuring, through means of the second phase of the auction, that less populated rural areas are less likely to go unserved. The proposal facilitates an efficient spectrum buildout by providing large carriers with access to the urban areas of EAs while providing rural carriers with licenses small enough to serve strictly rural areas. Most importantly, the proposal is by far the most consumer-friendly proposal because it ensures that this valuable 600 MHz spectrum goes to the best possible use for consumers across a wide swath of both rural and urban America. By contrast, with EA-based

²⁵ NERA Report at pp. 46-47, 52.

²⁶ NERA Report at p. 19.

licensing, and particularly if the Commission adopts population-based buildout requirements, the Commission runs the very real risk that this spectrum would be deployed only in population-dense urban areas while sitting fallow in rural areas. The proposal described in the NERA Report also respects and preserves the Incentive Auction Team’s preference to conduct the reverse and Forward Auctions as well as the repacking of spectrum on the basis of 176 EAs.

V. THERE IS NO EVIDENCE TO SUPPORT THE PROPOSITION THAT CMAs WOULD INCREASE AUCTION IMPLEMENTATION RISKS.

The FCC indicated in the *Incentive Auction NPRM* that it has concerns that “very small licenses may raise implementation risks for the auction designs contemplated in this proceeding,”²⁷ but no evidence of any actual complications from smaller license sizes (and the resulting larger number of auction lots) has been presented by the Commission or any other commenter. It is unclear from the record what specific implementation risks the FCC is concerned with, but it appears the Commission may be concerned that its auction software design cannot accommodate a larger number of auction lots, and therefore, it is focusing on adopting EA-based geographic areas. However, there is no reason to adopt licensing criteria on the basis of auction software design limitations, particularly considering that the Commission’s failure to adopt CMA-based geographic licensing will result in the failure of many small businesses and rural carriers to participate in the auction and the failure of services to be deployed to rural areas, in direct contravention of Section 309(j) of the Act.

In fact, NERA found that any perceived implementation risks associated with the auction design will not be exacerbated by the use of CMA based license areas. “As a general point, the FCC and its advisors are already proposing that the auction design be able to cope with 176

²⁷ *Incentive Auction NPRM* at ¶ 147.

regions, which is a substantial number. Therefore, one would expect that such a design could be extended to cope with many more regions and there is no absolute maximum on the number of licenses that could be sold using the FCC design for the Forward Auction.”²⁸ Adopting EA-based license areas for this extremely valuable 600 MHz spectrum based on hypothetical complications that have no factual basis in the record would be against the public interest, particularly considering the record clearly shows that adopting EAs would preclude small businesses and rural carriers from participating in the Incentive Auction.

VI. THE RWA/NTCA PROPOSAL BALANCES RURAL CARRIER PARTICIPATION AND LARGE CARRIERS’ POTENTIAL AGGREGATION RISKS.

While the Associations acknowledge that larger carriers are concerned with potential aggregation risks associated with smaller geographic license areas, the adoption of CMAs would not keep these large carriers, unlike small businesses and rural carriers that face bidding on EA licenses, from participating in the auction altogether. Furthermore, the two-phase auction process described in the RWA/NTCA Proposal and in the NERA Report would mitigate these concerns by allowing large carriers to bid on and secure licenses for major metropolitan areas before bidding on licenses for surrounding rural areas. Under this proposal, a carrier will not be stuck with RSA licenses for which it might not win the corresponding MSA license(s). While smaller geographic license areas *might* result in an increased aggregation risk for large and regional carriers, the Commission must balance the public interest benefits, if any, resulting from limiting potential aggregation risks against its statutory obligations under Section 309(j) to ensure that small businesses and rural carriers have a meaningful opportunity to participate in the auction.

²⁸ NERA Report at p. 26.

The record clearly shows that without CMAs, many small businesses and rural carriers cannot effectively participate in the auction. Adoption of an EA-based licensing scheme will call into question whether the statutory mandates are indeed being fulfilled and result in clear public interest harms, including the elimination of some small businesses and rural carriers from the Incentive Auction altogether and delayed deployment of broadband services to rural areas. Any public interest benefits that might result from mitigating large carriers' potential aggregation risks clearly do not outweigh these demonstrated public interest harms.

VII. IF PEAs ARE USED, THE PEAs MUST BE “RIGHT-SIZED” TO ENSURE SMALL BUSINESS AND RURAL CARRIER PARTICIPATION IN THE INCENTIVE AUCTION.

While PEAs will generally serve small businesses and rural carriers better than EAs, the PEAs currently under consideration are still too large to allow many rural carriers to participate in the auction, particularly those rural carriers located west of the Mississippi River. Adopting PEA-based licenses, as currently proposed, will require many of the Associations' members, and other rural carriers, to bid on licenses covering geographic areas and populations that are many times the sizes of their existing license areas.

For example, as discussed above and in the NERA Report,²⁹ Pinpoint currently provides commercial wireless service in eight counties in rural southern Nebraska and Kansas with a resident population of 34,473 as of the 2010 Census. If the Commission were to adopt EAs, Pinpoint would need to win four EAs covering 6.24 million Americans in 158 counties in Kansas, Nebraska, Oklahoma, and Colorado. If the Commission were to adopt PEAs, Pinpoint would need to win four PEAs covering 75 counties and a population of over 500,000 people in these same four states. Even if the FCC were to adopt PEAs, it is questionable whether Pinpoint

²⁹ NERA Report at pp. 15-16.

would be able to effectively compete against a national carrier, given that Pinpoint is only interested in serving a modest portion of the available customer base. However, if the Commission were to adopt CMA-based licenses, Pinpoint would need to bid on only two CMAs consisting of 26 counties in both states in order to cover its current licensed footprint. While CMAs would still result in Pinpoint bidding on an area larger than its current service territory, Pinpoint would be able to competitively participate in the Incentive Auction.³⁰

While PEAs are a better fit than EAs for NEP, PEAs are still larger than NEP needs to serve its existing service area. Specifically, NEP's current service territory covers a population of 300,000 people. To cover its existing footprint, NEP would need to bid on two PEAs covering a population of more than 1.5 million people. If the FCC adopts CMAs, NEP would be able to bid on two CMAs and cover 95% of its service territory.³¹

PEAs are a better option for Leaco than EAs, but they are still too big. Leaco currently provides service to a territory covering less than one million people. However, to cover its current service territory, Leaco would need to bid on nine PEAs with a total population of 2.5 million people, which is more than twice its current service footprint.³²

As these examples show, even licenses based on PEAs will result in the Associations' members bidding on license areas that are larger than their current service areas, which may preclude certain carriers from participating in the auction.³³ If the Commission adopts PEA-

³⁰ NERA Report at pp. 15-16.

³¹ NERA Report at p. 16.

³² NERA Report at p. 16.

³³ The Associations just yesterday wrapped up their joint Wireless Symposium and WiExpo meeting during which they notified their attending members of the revised PEAs. However, with the holidays occurring so soon after the revised PEAs were filed with the Commission the Associations are still working to notify their other members of the changes. The Associations expect to continue discussing the revised PEAs with their members and conduct a more thorough

based licensing, it will need to address this issue by implementing a process whereby individual carriers are permitted to comment on and revise the PEAs encompassing their service territories. As discussed above, the NERA Report recommends the Commission “define a new PEA geographic tier level, based on an analysis of likely demand at the CMA and EA levels.”³⁴ NERA suggests the Commission implement stakeholder-driven rules for the new license structure that would involve the Commission adopting a basic structure for PEA licensing while providing stakeholders the opportunity to petition for variations of the rules.³⁵ The FCC could give greater weight to petitions that “make it easier for small operators to replicate or modestly expand an existing operating footprint, for example by linking together some RSAs; or separate metro areas that are not geographically adjacent.”³⁶ While modifying the proposed PEAs is possible, it is important to note that CMAs are established geographic license areas that would not require the Commission to address individual carrier petitions for modification. CMAs are also just the right size to ensure the Associations’ members are not foreclosed from participating in the Incentive Auction.

VIII. THE FCC CANNOT RELY ON THE SECONDARY MARKET TO ENSURE SPECTRUM OPPORTUNITIES FOR RURAL CARRIERS.

If the Commission does not adopt CMAs for the Incentive Auction, many small and rural carriers that serve consumers in rural areas will have to wait for the auction to end and then try to negotiate secondary market arrangements for licenses covering their rural markets. However, the FCC cannot rely on auction winners to provide rural carriers with access to unused 600 MHz

analysis of the revised PEAs. The Associations will discuss the results of those discussions and research in Reply comments.

³⁴ NERA Report at p. 33.

³⁵ See NERA Report at pp. 33-34.

³⁶ NERA Report at p. 33.

spectrum through secondary market arrangements. Secondary markets are not a reliable source of spectrum. As indicated in the *National Broadband Plan*, the secondary market is not a solution to the lack of coverage in rural areas.³⁷ Relying on small and rural carrier access to spectrum via the secondary market assumes that such a market actually develops and that license holders are willing to part with spectrum at reasonable prices. In reality, the secondary market is a far more effective tool for large operators to consolidate spectrum than it is for small and rural operators to acquire it through partitioning or disaggregation. As outlined by the NERA Report “there are many examples of larger operators acquiring spectrum from smaller players over the last five years...³⁸ [but] there is little recent history of the larger carriers leasing, disaggregating or partitioning large sections of spectrum where they already have service.”³⁹

³⁷ See generally Federal Communications Commission, *Connecting America: The National Broadband Plan* (2010) (noting that “While the FCC currently has rules that enable secondary markets, the record is mixed,” and that some public comments provide “that unused or underutilized spectrum is not being made available to smaller providers, especially in rural areas where spectrum goes unused”) (“*National Broadband Plan*”).

³⁸ See, e.g., *In the Matter of AT&T, Inc., Leap Wireless International, Inc., Cricket License Company, LLC, and Leap Licenseco, Inc. Seek Consent to the Transfer of Control of AWS-1 Licenses, PCS Licenses, and Common Carrier Fixed Point to Point Microwave Licenses, and International 214 Authorizations, and the Assignment of One 700 MHz License*, Comments of the Rural Wireless Association, Inc., WT Docket No. 13-193 (filed September 27, 2013); *In the Matter of Applications of Softbank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation for Consent to Transfer Control of Licenses and Authorizations, and Petitions for Reconsideration of Applications of Clearwire Corporation for Pro Forma Transfer of Control*, IB Docket No. 12-343 and ULS File Nos. 0005480932, et. al., (Order Released July 5, 2013); *In the Matter of AT&T, Inc., Cellco Partnership d/b/a Verizon Wireless, Grain Spectrum, LLC, and Grain Spectrum II, LLC Seek FCC Consent to the Assignment of Advanced Wireless Services and Lower 700 MHz Band B Block Licenses and to Long Term De Facto Transfer Spectrum Leasing Arrangements Involving Advanced Wireless Services and Lower 700 MHz Band B Block Licenses*, Comments of the Rural Telecommunications Group, Inc., WT Docket No. 13-56 (filed April 4, 2013); *In the Matter of AT&T Inc. and Atlantic Tele-Network, Inc. Seek FCC Consent to the Transfer of Control and Assignment of Licenses, Spectrum Leasing Authorizations and an International Section 214 Authorization*, Comments of the Rural Telecommunications Group, Inc., WT Docket No. 13-54 (filed April 4, 2013); *In the Matter of Applications of Deutsche Telekom AG, T-Mobile USA, Inc., and MetroPCS Communications,*

As noted by U.S. Cellular in the AWS-3 auction proceeding, spectrum divestitures by partition, disaggregation, and leases to small and rural carriers “have been, and likely will continue to be, the exception rather than the rule.”⁴⁰ U.S. Cellular further stated that “the theoretical availability of these secondary market transactions is unlikely to provide small and

Inc. for Consent to Transfer of Control of Licenses and Authorization, WT Docket No. 12-301 (Order Released March 12, 2013); *In the Matter of AT&T, Inc. and Cellular South, Inc. Seek FCC Consent to the Assignment of Cellular, Personal Communications Services, Lower 700 MHz C Block, and Microwave Licenses Covering Parts of Alabama, Georgia and Tennessee*, Comments of the Rural Telecommunications Group, Inc., ULS File Nos. 0005597386, et. al. (filed March 8, 2013); *In re Applications of Cellco Partnership d/b/a Verizon Wireless and T-Mobile License, LLC Seek FCC Consent to the Assignment of Advanced Wireless Service Licenses*, Petition to Deny, WT Docket No. 12-175 (filed July 10, 2012); *In re Applications of Cellco Partnership d/b/a Verizon Wireless and Leap Wireless International, Inc. Seek FCC Consent to the Exchange of Lower 700 MHz Band A Block, AWS-1, and Personal Communications Service Licenses*, Petition to Deny of the Rural Telecommunications Group, Inc., ULS File Nos. 0004942973 et. al. (filed February 21, 2012); *In re Applications of SpectrumCo, LLC, Transferor and Cox TMI Wireless, LLC, Transferor, and Cellco Partnership d/b/a Verizon Wireless, Transferee, for Consent to the Assignment of AWS-1 Licenses*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 12-4 (filed February 21, 2012); *In re the Applications of Deutsche Telekom AG, Transferor, and AT&T, Inc., Transferee, for Consent to Assign or Transfer Control of Licenses and Authorizations*, Petition to Deny, WT Docket No. 11-65 (filed May 31, 2011); *In the Matter of Applications of AT&T Inc. and Cellco Partnership d/b/a Verizon Wireless for Consent to Assign or Transfer Control of Licenses and Authorizations and Modify a Spectrum Leasing Arrangement*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 09-104 (filed July 20, 2009); *In the Matter of Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorization, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Petition to Deny of the Rural Telecommunications Group, Inc., WT Docket No. 08-95 (filed August 11, 2008).

³⁹ NERA Report at pp. 18-19.

⁴⁰ Comments of United States Cellular Corporation, *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 at p. 31 (filed Sept. 18, 2013) (“U.S. Cellular Comments”). See also *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, 17090, n. 260 (2007) (“[S]ome commenters in the rural proceeding ... argued that existing secondary market mechanisms are insufficient to promote access to spectrum.”); FCC, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, GN Docket No. 09-29 (May 22, 2009), attached to *Rural Broadband Report Published in FCC Record*, Public Notice, 24 FCC Rcd 12860 (noting that some commenters stressed that the Commission’s “secondary market rules do not always promote spectrum trading and re-use...”).

regional carriers with timely or adequate access” to spectrum.⁴¹ Similarly, in the H-Block auction proceeding, NTELOS Holdings Corp. (“nTelos”) filed comments noting that its attempts to acquire additional spectrum in the secondary market to effectively deploy its 4G LTE network have been “largely unsuccessful.”⁴² The Associations share nTelos’ concern that the secondary market “has generally resulted in greater spectrum holdings for the larger, nationwide carriers, and has resulted in fewer opportunities for, and sometimes even the exit of, smaller, regional carriers.”⁴³ Clearly, the secondary market cannot be relied on to ensure that small businesses and rural carriers have access to 600 MHz spectrum.

IX. CONCLUSION.

EA-based licenses are too large for many small businesses and rural carriers, and will result in these companies having no meaningful opportunity to participate in the Incentive Auction. The Commission must adopt geographic licensing areas, such as CMAs, that allow small businesses and rural carriers to participate in the Incentive Auction. While CMAs are preferred over PEAs and PEAs preferred over EAs, the currently proposed PEAs are still, in some cases, too large for many of the Associations’ members and are almost certain to require the Commission to undertake the cumbersome and challenging process of ruling on carrier petitions seeking PEA modifications to fit their individual service footprints. However, the auction framework described in the NERA Report, which develops license areas that are based

⁴¹ U.S. Cellular Comments at p. 33.

⁴² 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, at p. 2 (filed Nov. 12, 2013).

⁴³ *Id.* at p. 4.

on EAs as well as CMAs, solves the Commission's auction design concerns with regard to the reverse and Forward Auctions and provides rural carriers and small businesses with a meaningful opportunity to participate in the auction.

Respectfully submitted,

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NTCA - The Rural Broadband Association

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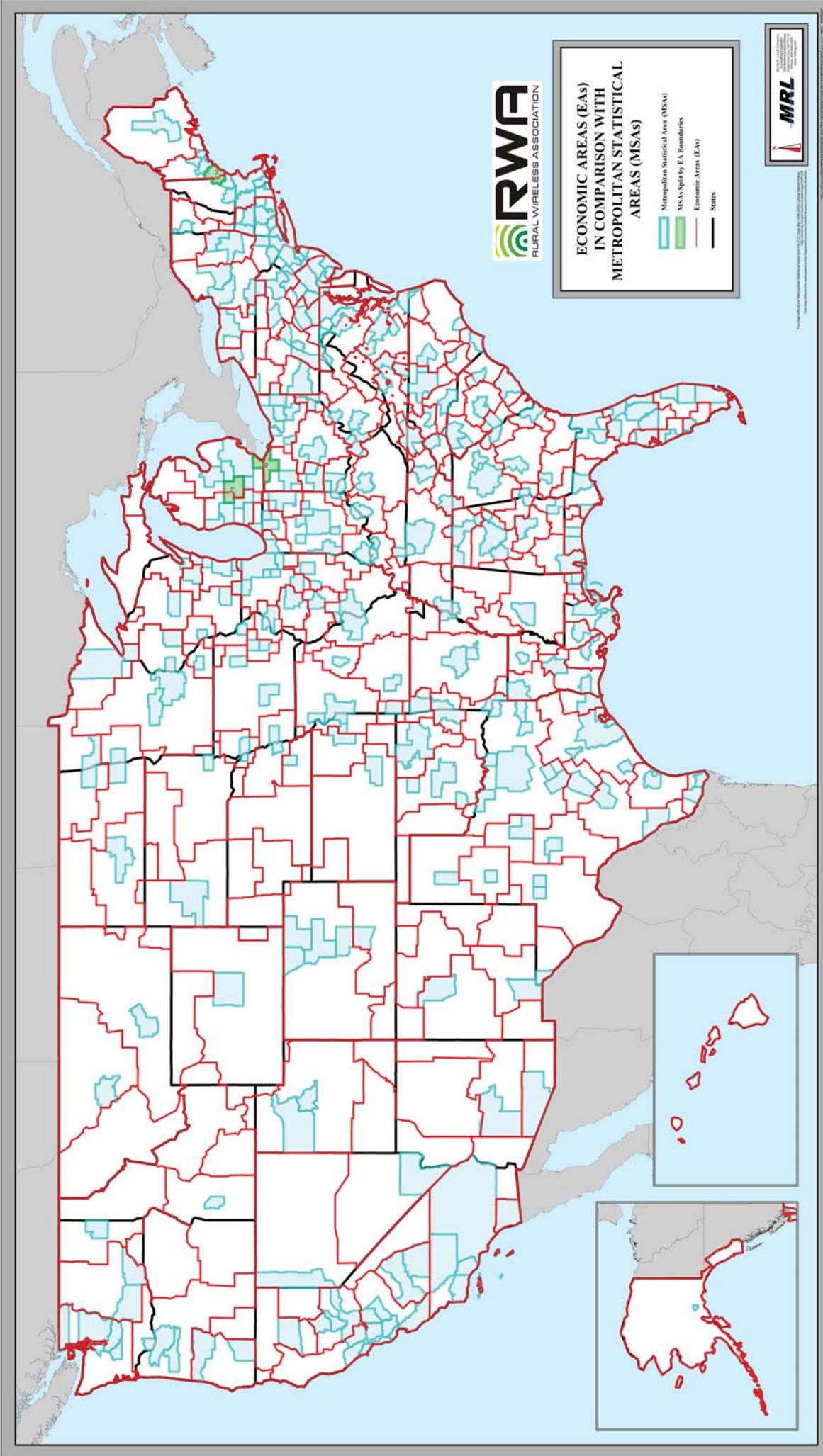
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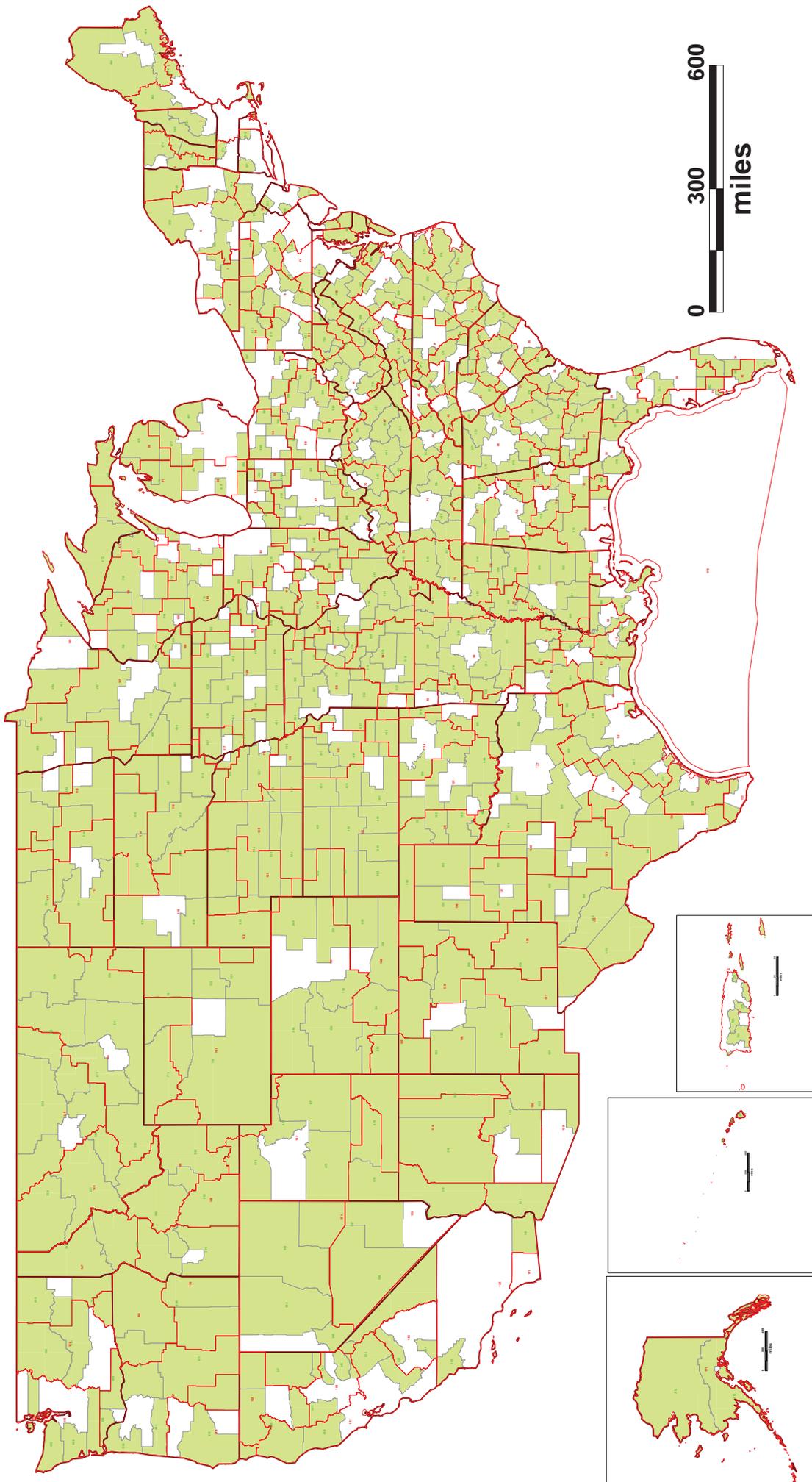
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January 9, 2014

Exhibit A Comparison of MSAs with EAs Boundaries





January 9, 2014

State Boundary
Economic Area (EA)
RSA