Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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, 1755-1780 MHz and 2155-2180 MHz Bands	)	GN Docket No. 13-185

<u>REPLY COMMENTS OF NTELOS HOLDINGS CORP.</u>

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NTELOS Holdings Corp. ("nTelos"),[1] by its attorneys, hereby respectfully submits its comments on the *Public Notice* released by the Wireless Telecommunications Bureau (the "Bureau") in the above-captioned proceeding pertaining to the proposal of the Competitive Carriers Association ("CCA") to use Partial Economic Areas ("PEAs") as the geographic license sizes for the upcoming 600 MHz incentive auction.[2] nTelos urges the Bureau and the Commission to adopt a band plan that licenses spectrum in smaller geographic areas, preferably cellular market areas ("CMAs"), so that competitive carriers have a meaningful opportunity to obtain spectrum. In lieu of adopting a CMA proposal, nTelos urges the Bureau to adopt CCA's

[1] For purposes of these Comments, the term "nTelos" refers to NTELOS Holdings Corp. and all of its FCC-licensed subsidiaries.

[2] *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*").

PEA proposal as a next-best alternative, subject to the recommendations and considerations below. In support, the following is respectfully shown:

I. INTRODUCTION AND SUMMARY

nTelos is a regional provider of high-speed voice and data services for businesses and approximately 464,600 retail subscribers in select areas of Virginia, West Virginia, Maryland, Ohio, Kentucky, North Carolina, and Pennsylvania. nTelos's licensed territories have a total population of approximately 8.1 million residents, of which its wireless network covers approximately 6.0 million residents. nTelos competes in its service areas against the nationwide wireless carriers, and it actively innovates and offers competitive services to its customers. For example, nTelos has recently partnered with DISH in a pilot program to provide fixed wireless broadband service in rural Virginia using spectrum in the 2.5 GHz range, which could result in enhanced competition to vastly underserved communities.[3] nTelos is also improving its service offerings by deploying a 4G LTE network. However, in order to build a next-generation network capable of competing against its much larger nationwide rivals, it must have access to additional spectrum.

As nTelos has stated in the past, it has been "actively seeking to acquire additional spectrum for the past several years in order to provide more robust services to its customers . . . but its efforts to do so have been largely unsuccessful."[4] Thus, the upcoming series of Federal Communications Commission ("FCC" or "Commission") spectrum auctions, including the H Block Auction, the AWS-3 Auction and the incentive auction, each represents a critical

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[3] "DISH and nTelos launch fixed wireless broadband pilot," Press Release, June 13, 2013, *available at* http://ir.ntelos.com/Cache/1001176318.PDF?Y=&O=PDF&D=&FID=1001176318&T=&IID=4110676.

[4] Reply Comments of NTELOS Holdings Corp., AU Docket No. 13-178 (filed August 16, 2013) ("nTelos H Block Comments").

opportunity for nTelos. Unfortunately, the Commission decided to license spectrum for the H Block auction in EA geographic areas. nTelos urges the Commission to choose a better, more competitive format for the upcoming auctions.

nTelos believes that CMAs represent the most appropriate license size for a "building block" approach to acquiring spectrum – one that benefits large carriers, small carriers and the U.S. Treasury alike. As an alternative to CMAs, for the limited purposes of the incentive auction, nTelos supports CCA's compromise PEA proposal, as discussed in greater detail below. Notwithstanding its support of the CCA PEA proposal, nTelos urges the Commission, should it decide to move forward with the CCA proposal, to reject package bidding for all of the same reasons that nTelos and others recommended that the Commission not permit the same in the H Block auction. Namely, package bidding favors large carriers at the expense of smaller carriers, limits the ability of small carriers to participate, and, through limited participation, results in lower auction revenues flowing to the U.S. Treasury. If the Commission decides to allow some limited form of package bidding in the incentive auction, it should be severely curtailed and limited to *at most* the top 10 PEAs in the United States, as measured by population. By structuring the auction in the manner described herein, the Commission can increase competition in a consolidating wireless industry by giving smaller carriers greater access to much-needed spectrum resources.

II. THE COMMISSION SHOULD ADOPT SMALLER LICENSE AREAS IN ORDER TO ENCOURAGE BROAD PARTICIPATION BY COMPETITIVE CARRIERS IN THE INCENTIVE AUCTION

The adoption of smaller license sizes is supported in some capacity by nearly every carrier that has commented in this proceeding, with two unsurprising exceptions.[5] Although their proposals may differ around the edges, it is no coincidence that a nearly-unanimous group of wireless providers have coalesced around the principle that smaller license sizes are better – it simply is good policy. As a recent economic study by The Summit Group showed, the use of smaller geographic license sizes in the upcoming incentive auction will produce myriad benefits, including freeing up the maximum quantity of spectrum, expanding consumer choice and lowering prices, allowing for more flexible use of spectrum over the long term, raising auction revenue and promoting participation by smaller and rural carriers.[6] Although the Summit Group Study provides a compelling economic argument for each of these significant benefits, the Commission need look no further than Auction 73 as a case study in the danger of too-large license sizes.

As nTelos previously reminded the Commission, "[t]he procedures that were used to auction the 700 MHz spectrum created a host of undesirable outcomes that continue to plague

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[5] *See e.g.*, Comments of Competitive Carriers Association (filed Jan. 9, 2014); Comments of T-Mobile USA, Inc. (filed Jan 9, 2014); Comments of Atlantic Telephone Membership Corporation et al. (filed Jan 9, 2014); Comments of Public Service Wireless Services, Inc. (filed Jan. 9, 2014); Comments of Wireless Internet Service Providers Association (filed Jan. 9, 2014); Joint Comments of Rural Wireless Association and NTCA-The Rural Broadband Association (filed Jan. 9, 2014); Comments of Blooston Rural Carriers (filed Jan. 9, 2014); Comments of Peoples Telephone Cooperative, Inc. (filed Jan 9, 2014); Comments of United States Cellular Corporation (filed Jan. 9, 2014); Comments of Cellular South, Inc. d/b/a C Spire (filed Jan. 9, 2014); Comments of King Street Wireless, L.P. (filed Jan. 9, 2014).

[6] William Lehr and J. Armand Musey, "Right-sizing Spectrum Auction Licenses," The Summit ridge Group (Nov. 20, 2013), *available at* http://competitivecarriers.org/wp-content/uploads/2013/11/Summit-Ridge-Group-Right-sizing-Spectrum-Auction-Licenses-FINAL.pdf (the "Summit Group Study").

the industry, and especially smaller carriers, to this day."[7] These procedures included not only large geographic license sizes in the Upper 700 MHz C Block, but also the presence of package bidding. These unfortunate decisions combined to enable AT&T and Verizon to acquire $16.3 billion worth of spectrum licenses, out of the $19.6 billion spent in total by all participants in the auction. The Commission must avoid a similar result in the 600 MHz incentive auction, as it represents the last near-term chance that competitive carriers have to acquire much-needed low band spectrum.

A. There is Near-Unanimous Support in the Record for the Use of Smaller Geographic License Sizes

With the exception of the AT&T and Verizon, every carrier that has weighed in on this proceeding has supported the use of smaller geographic license sizes in some form. The list of commenters includes: (1) CCA, the author of the PEA proposal; (2) C Spire; (3) the Carolina Companies; (4) Public Service Wireless Services; (5) the Wireless Internet Service Providers Association; (6) the Rural Wireless Association and NTCA; (7) Blooston Rural Carriers; (8) People's Telephone Cooperative; (9) U.S. Cellular Corporation; and (10) King Street Wireless. Perhaps most importantly, T-Mobile, a significant nationwide carrier, also supports the use of smaller geographic licenses, and is generally supportive of CCA's PEA proposal. T-Mobile, unlike AT&T and Verizon, recognizes that the PEA proposal represents a reasonable compromise solution to geographic licensing, because it allows smaller, rural and regional carriers to obtain spectrum licenses that they can afford, and which cover areas that they can efficiently serve. At the same time, these PEAs can be aggregated into larger EAs that may be more suitable for nationwide carriers like T-Mobile, but which still provide reasonable access to

[7] nTelos H Block Comments at 3.

spectrum by smaller carriers. T-Mobile recognized that "[l]arger and smaller carriers tend to be fundamentally at odds when it comes to license size. Larger carriers prefer larger licenses that help reduce exposure risk and administrative costs. Smaller carriers, meanwhile, prefer smaller licenses that cover areas they can efficiently serve and that they can afford to bid on."[8] However, even as a large nationwide carrier, T-Mobile recognized that "CCA's proposal seems to be a reasonable compromise between these two positions," correctly noting that "a PEA approach would blend the different license size approaches and promote participation in the auction by a variety of carriers."[9] This recognition by T-Mobile is significant, as it shows that there is agreement between many smaller members and one of the nation's largest carriers on a compromise solution to geographic licensing for the incentive auction.

As noted above, only AT&T and Verizon, standing together, support EA licensing in the incentive auction, which should come as no surprise to the Commission. At present, AT&T and Verizon control a near-monopoly on spectrum below 1 GHz, spectrum whose unique propagation characteristics are recognized as a critical part of any competitive spectrum portfolio. Indeed, it may be that their support of EA licensing is not born from a desire to reduce auction complexity, but rather a desire to foreclose the ability of other carriers to obtain the spectrum that they need to remain competitive. In a recent *ex parte* filing on the matter, the U.S. Department of Justice ("DOJ") warned that "it is important that the Commission devise policies that address the allocation of low-frequency spectrum in particular so that the acquisitions of such spectrum do not hamper the ability of carriers to compete in markets where that spectrum is

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[8] T-Mobile Comments at 8.

[9] *Id*.

important."[10] In this same *ex parte*, the DOJ expressed serious concern that the largest carriers would continue to foreclose their smaller rivals from access to low-band spectrum if the Commission does not adopt auction policies that address the appropriate distribution of this critical resource.

Specifically, the DOJ's "principal concern is that acquisitions of spectrum, whether at auction or through subsequent transactions, should not be used to create or enhance market power."[11] The Commission must heed the DOJ's warning and recognize that licensing spectrum on an EA basis will increase the ability of the nation's largest carriers to engage in economic foreclosure behavior. Because, as discussed above, EAs cover larger population centers than do many PEAs, AT&T and Verizon can use their significantly larger bankroll to price smaller carriers out of these EAs, even though a PEA nested within that EA may hold significantly more value for a smaller carrier. Thus, a smaller carrier who may be willing to pay for a specific PEA located outside of a major population center runs the risk of being economically foreclosed from obtaining spectrum in that geographic area if the Commission chooses to license on an EA-only basis. The Commission should not make it easier for the largest carriers to realize the stark scenario outlined by the DOJ, but must instead heed the many warning signs and license spectrum in the incentive auction in reasonable geographic license sizes, such as the PEAs proposed by CCA, or, preferably, CMAs.

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[10] *Ex Parte* Submission of the United States Department of Justice, WT Docket No. 12-269, at 14, (filed Apr. 11, 2013) ("DOJ *Ex Parte*").

[11] *Id*. at 8.

B. CMAs Represent the Best Geographic License Size for the Incentive Auction, and Will Increase Participation, Competition and Auction Revenue

As nTelos has stated in past auction proceedings, CMAs represent the best approach to geographic licensing for all auctions. Specifically, nTelos has argued that the "Commission and the Bureau should both favor a building block approach to spectrum acquisition that uses the smallest feasible units to generate the most auction revenue and provide the greatest flexibility to bidders."[12] This "building block" approach has the dual benefit of allowing larger carriers to aggregate groups of CMA licenses into large geographic territories, while the use of CMA license sizes still preserves the ability of rural and regional carriers to obtain licenses specific to their coverage areas and best suited to their budgets and business plans. Rather than forcing a carrier like nTelos to compete with the nation's largest carriers for license areas that encompass major population centers that nTelos does not serve, the Commission should design an auction that allows nTelos to focus its resources on covering smaller license footprints that complement or enhance its existing network.

The Commission also must take into account its obligation to raise revenues for the U.S. Treasury in this auction, most notably to raise the money to be used for the construction of the important nationwide public safety network, FirstNet. As nTelos has previously stated, "[l]icensing spectrum by CMAs would also likely capture more auction revenue because more carriers, including smaller carriers with limited resources, would be likely to bid on CMAs. The increased market demand would likely drive auction revenue up, and likely ensure that the highest-value users win access to the spectrum."[13] nTelos' statements are fully supported by the Summit Group Study, which found that "[s]maller geographic sizes would also allow better

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[12] nTelos H Block Comments at 11.

[13] *Id*.

opportunities for all bidders to right-size their bids. That would encourage participation and alleviate the need to reduce bids to compensate for the costs of acquiring wrong-sized spectrum licenses. Taken together, these effects would help ensure that the highest value bidders participate in each market and the winning bid goes to the operator best able to realize value from the spectrum resources acquired."[14] Simply put, the greater the ability of *all* carriers to participate, the greater the likelihood that the carrier who values the spectrum most highly will obtain it, and will do so at the highest price that the market will bear.

Here, again, Auction 73 provides a notable example. In that auction, which included a mix of REAGs, EAs and CMAs, CMAs were clearly the most desirable license size, fetching revenues on a price per MHz*POPs basis far exceeding the larger licenses offered in the auction. Specifically, CMAs sold for $2.68 per MHz-POP, EA Block A sold for $1.16 per MHz-POP and EA Block E sold for $0.74 per MHz-POP, with the Upper C Block REAGs selling for $0.76 per MHz-POP.[15] Thus, if the Commission desires to increase participation, competition and auction revenues in the incentive auction, it should adopt a geographic licensing scheme that uses CMAs as the building block basis for the auction.

C. If the Commission Does Not Adopt CMAs for the Incentive Auction, It Should Adopt CCA's Compromise PEA Proposal as the Next-Best Alternative

Given the overwhelming evidence presented above, nTelos continues to advocate for the use of CMAs in the incentive auction, and in all upcoming FCC spectrum auctions. However, nTelos realizes that reaching consensus on the most appropriate license sizes for the 600 MHz incentive auction may require a compromise solution. Thus, to the extent that the Commission

[14] Summit Group Study at 24.

[15] *Id*. at 25.

declines to adopt CMAs as the license sizes for the incentive auction, nTelos supports the use of CCA's PEA proposal for the limited scope of the incentive auction.[16] Although, like any compromise, CCA's PEA proposal is not ideal, it still maintains many of the characteristics of small geographic license sizes that hold significant benefits over EA licensing. Specifically, it will allow, albeit on a more limited scope, carriers to engage in the "building block" approach to spectrum acquisition that was the hallmark of the successful Auction 66, in which many competitive carriers were able to obtain important spectrum resources. As CCA has noted, "While not as small as CMAs, PEAs would promote many of the benefits of smaller licenses and are strongly preferable to [EAs], given the foreclosure risks associated with such larger geographic units."[17] The PEA licensing scheme will allow smaller carriers to obtain spectrum in smaller geographic license areas that are more appropriate to their markets and business models, while also allowing larger carriers to aggregate PEAs into the larger EA licenses that may fit their own spectrum needs.

In addition to promoting the participation of smaller carriers and likely increasing auction revenues to a greater than extent than EA licensing, PEAs will also have the benefit of reducing complexity for the Commission during the design and implementation phases of the incentive auction. First, PEAs neatly nest into existing EAs, meaning that carriers can fit PEAs easily within any portion of their current spectrum portfolios that are licensed in EAs. As CCA has stated, PEAs "allow the Commission to map recovered blocks of spectrum efficiently based on

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[16] While nTelos, as an alternative to CMA licensing, supports the use of the compromise PEA proposal given the unique nature of the incentive auction, it maintains that CMAs should be the basis for the AWS-3 auction and all other future Commission auctions.

[17] Supplemental Comments of the Competitive Carriers Association Regarding the Use of "Partial Economic Areas," at 2, GN Docket Nos. 12-268 and 13-185 (filed Jan. 9, 2014) ("CCA Supplemental Comments").

potential market variation, and to perform the complex calculations necessary to implement the auction."[18] This is also likely to improve the usability and efficiency of incentive auction spectrum when folded into carrier's spectrum portfolios. Second, and perhaps most important from the Commission's perspective, "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."[19] Although they do not have all the benefits of CMAs, PEAs provide a reasonable compromise alternative to geographic spectrum licensing given the distinctive nature of the incentive auction, and should be used if the Commission declines to license spectrum in the incentive auction on a CMA basis.

III. THE COMMISSION SHOULD REJECT OR STRICTLY LIMIT PACKAGE BIDDING IN THE INCENTIVE AUCTION

The Commission should not allow package bidding to be used in the incentive auction because it will (a) bias the auction in favor of the largest and best-funded bidders, (b) prevent smaller carriers from winning the licenses they need to augment and expand their networks to serve rural areas, and (c) add unnecessary complexity to an auction where the Commission has indicated it is seeking to reduce complexity. As nTelos has previously commented, package bidding significantly reduces the opportunity for smaller carriers to obtain spectrum at auction, as the ability of the largest carriers to bid on large packages of licenses "effectively eliminate[s] price competition from smaller carriers because smaller carriers have neither the desire nor the means to bid on packaged licenses."[20]

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[18] *Id*. at 6.

[19] *Id*.

[20] nTelos H Block Comments at 6.

Any package bidding proposal must be rejected, as it completely contradicts the Commission's mandate from Congress 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 [. . .];" and "economic opportunity and competition [. . .] 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."[21] The rejection of package bidding, particularly when combined with small geographic license sizes, means that each individual license area will be obtained by the carrier that deems it most valuable, not simply by the largest carrier that can fund the largest package of licenses. Indeed, in the recently rejected package bidding in the context of the H Block auction finding that a standard auction provided ample opportunity for larger carriers to purchase licenses covering larger aggregate areas. Specifically, the Commission "conclude[d] based on the record and in light of our experience with previous spectrum auctions, including auctions of Advanced Wireless Service ("AWS") and Personal Communications Service ("PCS") licenses, that a standard SMR auction format will offer adequate opportunity for bidders to aggregate licenses in order to obtain the level of coverage they desire consistent with their business plans."[22] For these same reasons, the Commission should find similarly with respect to the incentive auction, and decline to adopt package bidding.

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[21] 47 C.F.R. §§ 309(j)(3)(A), (B).

[22] *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014; Notice Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 96*, at ¶ 133, DA 13-1885, AU Docket No. 13-178 (rel. Sept. 13, 2013).

In addition to the exclusionary aspect that package bidding would visit on the incentive auction, package bidding also introduces unnecessary complexity into the auction that will not only deter the participation of smaller bidders, but also make the Commission's formidable task even more difficult. nTelos previously directed the Commission to a significant concern, which it shares, raised by Sprint in the H Block proceeding. Specifically, Sprint raised a fear that "the more packages and bid options facing each participant, the more it will cost each player to evaluate its options and probability for success," which may "limit overall auction participation, including the participation of smaller carriers."[23] This bidding complexity not only falls on the shoulders of smaller carriers, but also on those of the Commission itself.

The Commission has before it a daunting task of conducting a reverse auction, repacking broadcaster spectrum, and licensing the now-freed spectrum in varying blocks in markets across the United States. Indeed, the unique complexity of the incentive auction is one of the reasons that nTelos and others are willing to support a compromise PEA licensing proposal, rather than using more appropriate CMA license areas. The Commission must not eliminate complexity by adopting the PEA proposal and reducing the number of licenses to be auctioned, while simultaneously increasing complexity by allowing package bidding, thereby giving back all of the auction design efficiency gains that the PEA proposal affords. If the Commission is truly serious about reducing incentive auction complexity, it should reject package bidding as an unnecessary distraction.

However, if the Commission is intent on allowing some limited form of package bidding, it must be permitted only under highly limited circumstances. In this regard, nTelos supports

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[23] Comments of Sprint Corporation, *Competitive Bidding Procedures for Auction 96*, AU Docket No. 13-178, at 7-8, (filed Aug. 5, 2013).

CCA's proposal that "[t]o 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."[24] Limiting package bidding in this regard will have two significant auction benefits. First, it will mitigate the harms described above that are caused by package bidding, and allow smaller, rural and regional carriers a more reasonable opportunity to obtain the spectrum that they need. Second, rather than being forced to design an auction system that will track disparate package bids across the country, the Commission will have certainty in its auction design system, knowing that only a small number of PEAs will be available in a given package bid. On the other side of the coin, allowing a package bid to be placed for the ten largest PEAs by population also should satisfy the largest carriers who may want to obtain spectrum in the most populated areas.[25] Although nTelos does not favor package bidding in any respect, the type of limited package bidding proposed by CCA, in connection with license sizes smaller than EAs, may represent an acceptable compromise plan for the specific purposes of the incentive auction. In order to ensure wide participation and eliminate auction complexity, CCA's proposed package bidding safeguards should be adopted if the Commission chooses to permit package bidding at all in the incentive auction.

[24] CCA Supplemental Comments at 8. nTelos also joins CCA in rejecting AT&T's self-serving suggestion of nationwide package bidding. *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). A massive nationwide package of licenses would create significant obstacles to the participation of smaller carriers like nTelos, and may exclude them from the auction entirely. AT&T's proposal of the top 100 markets – which encompass more than 70 percent of the U.S. population – should similarly be rejected.

[25] Indeed, the top ten PEAs by population encompass approximately 30 percent of the population of the United States. *See* CCA Supplemental Comments at 8.

IV. CONCLUSION

As set forth above, nTelos believes that CMAs are the most appropriate geographic license sizes to be used both for the incentive auction and in all future FCC auctions. CMAs provide the best opportunity for small, rural and regional carriers to obtain critical spectrum resources, while allowing larger carriers to adopt a "building block" approach to acquiring spectrum covering larger geographic areas. However, nTelos is mindful of the complex job that the Commission has before it with the incentive auction, and is supportive of CCA's PEA licensing proposal as a reasonable compromise if a CMA licensing structure is not adopted. Similarly, while nTelos rejects the notion that package bidding is at all necessary in any auction, it supports CCA's package bidding proposal for the incentive auction, so long as any package bid is limited to no more than the top ten PEAs by population.

Respectfully submitted,

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