

**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, 1755-1780 MHz and 2155-2180 MHz Bands)	GN Docket No. 13-185
)	
To: The Commission)	

REPLY COMMENTS OF NEP CELLCORP, INC.

NEP Cellcorp, Inc. (“NEP”),¹ by its attorneys, hereby files these reply comments in response to comments filed by various parties with regard to the *Public Notice*² released by the Wireless Telecommunications Bureau (“Bureau”) of the Federal Communications Commission (“FCC” or “Commission”) seeking comments on the Competitive Carriers Association (“CCA”) proposal³ to adopt Partial Economic Areas (“PEAs”) to award licenses in the 600 MHz Broadcast Incentive Auction. The *Public Notice* also sought comment on any additional geographic licensing proposals, including the joint proposal submitted by the Rural Wireless

¹ NEP, a subsidiary of The North-Eastern Pennsylvania Telephone Company, currently provides wireless service in rural northeastern Pennsylvania.

² *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) (“*Public Notice*”).

³ Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC (Nov. 27, 2013) (“CCA PEA Ex Parte”); *see also* Letter from C. Sean Spivey, Competitive Carriers Association, to Marlene Dortch, Secretary, FCC (Dec. 23, 2013) (“CCA Revised PEA Ex Parte”).

Association, Inc. (“RWA”) and NTCA – The Rural Broadband Association (“NTCA”)⁴ to conduct a two-phased Incentive Auction.

NEP agrees with commenters’ widespread support⁵ for the use of Cellular Market Areas (“CMAs”), rather than Economic Areas (“EAs”), as the geographic license area for the Broadcast Incentive Auction. As discussed below, CMAs would provide NEP the most meaningful opportunity to participate in the Incentive Auction. However, in the event that the Commission decides against using CMAs as the auction’s geographic license area, NEP believes that the RWA/NTCA Proposal is the best alternative to encourage robust industry-wide auction participation.⁶ As they are currently proposed, PEAs remain too large for many small and rural carriers, like NEP, to effectively compete for auctioned licenses.

I. SECTION 309(j) OF THE ACT REQUIRES THE COMMISSION TO ADOPT RULES AND PROCEDURES THAT PROMOTE INCENTIVE AUCTION PARTICIPATION OF RURAL CARRIERS.

NEP agrees with the Comments filed by RWA, NTCA, the Blooston Rural Carriers

⁴ 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”).

⁵ See, e.g., Joint Association Comments; Supplemental Comments of Competitive Carriers Association, *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, 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 Nos. 12-268 & 13-185 (filed Jan. 9, 2014) (“CCA Comments”); Comments of the Blooston Rural Carriers, GN Docket Nos. 12-268 & 13-185 (filed Jan. 9, 2014) (“Blooston Comments”); Comments of Peoples Telephone Cooperative, Inc., GN Docket Nos. 12-268 & 13-185 (filed Jan. 9, 2014) (“Peoples Comments”); Comments of King Street Wireless, L.P., GN Docket Nos. 12-268 & 13-185 (filed Jan. 9, 2014); Comments of United States Cellular Corporation, GN Docket Nos. 12-268 & 13-185 (filed Jan. 9, 2014).

⁶ Under the RWA/NTCA Proposal, the Commission would conduct the reverse broadcast auction contemporaneously with the initial auction phase. During this phase, forward auction bidders would bid on the basis of EAs, but receive licenses covering only the MSA or MSAs (when there is more than one MSA) located within the relevant EA. After bidding is completed in the initial auction phase, the remaining 428 Rural Service Areas (“RSAs”) would be auctioned in the second auction phase. RWA/NTCA Proposal at p. 2.

and others that neither the use of EAs, nor CCA’s PEA approach, would adequately address the Commission’s obligations under Section 309(j) of the Communications Act of 1934, as amended (“the Act”).⁷ Section 309(j) requires the Commission to adopt auction and service rules, license sizes, and bandwidth assignments that, among other things, (1) ensure the timely deployment of new services to people residing in rural areas;⁸ (2) promote economic opportunity and competition;⁹ (3) ensure new technologies are readily available to the public by avoiding the excessive concentration of licenses;¹⁰ (4) disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies;¹¹ (5) prevent stockpiling or warehousing of spectrum;¹² and (6) promote an equitable distribution of licenses among different geographic areas and promote economic opportunities for small businesses and rural carriers.¹³ As discussed below, if the Commission was to adopt EAs and (to a lesser extent) PEAs as the Incentive Auction’s geographic license area, many small and rural carriers would be unable to participate. As a result, the Commission would contravene the Section 309(j) requirements put in place to promote provider diversity and encourage rural wireless deployment.

II. COMMISSION USE OF EAs AS GEOGRAPHIC LICENSE AREAS WOULD PREVENT NEP FROM PARTICIPATING IN THE INCENTIVE AUCTION.

While NEP supports the Commission’s use of geographic license areas, the use of large geographic license areas such as EAs will prevent NEP from participating in the Incentive Auction. NEP’s licensed service area includes rural northeastern Pennsylvania and a small portion of rural New York, and has a combined population of over 562,340 people. In order to

⁷ See, e.g., Joint Association Comments at pp. 5-6; Blooston Comments at pp. 1, 6.

⁸ 47 U.S.C. § 309(j)(3)(A).

⁹ 47 U.S.C. § 309(j)(3)(B).

¹⁰ *Id.*

¹¹ *Id.*

¹² 47 U.S.C. § 309(j)(4)(B).

¹³ 47 U.S.C. § 309(j)(4)(C). See also Joint Association Comments at p. 6.

cover its existing licensed footprint of five rural counties, NEP would have to bid on spectrum across two EAs, one of which includes New York City. These two EAs cover 28 million people, and include counties in Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, and Vermont. Together, EA 6 and EA 10 stretch from the Canadian border in the north to the New Jersey Shore in the south, and from to the tip of Long Island in the east to the Appalachian Mountains in the west. By way of comparison, in Auction 73, AT&T spent over \$883 million on just 12 megahertz of valuable 700 MHz spectrum covering the New York City CMA. The price of acquiring both EA 6 and EA 10 in the upcoming Incentive Auction could easily exceed \$1 billion. Realistically, NEP cannot compete under such a scenario.

NEP is not alone. The Summit Ridge Group, based on an analysis of letters to the FCC, has identified 12 local carriers that will not participate in the auction if an EA structure is used exclusively for licensing 600 MHz spectrum.¹⁴ The NERA Report identified several additional rural carriers (including NEP) for which the use of EA geographic licensing areas would make Incentive Auction participation difficult, if not impossible.¹⁵

III. AS CURRENTLY PROPOSED, PEAs WILL NOT MAXIMIZE AUCTION PARTICIPATION.

Though PEAs would be a better geographic license area option than EAs, NEP agrees with other commenters that CCA's current PEA proposal does not adequately address the concerns many small and rural carriers have regarding the size of the licenses to be auctioned.¹⁶

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*, at p. 17 (Nov. 20, 2013) ("Summit Study"). See also Richard Marsden, Dr. Chantale LaCasse, and Jonathan Pike, *Local and Regional Licensing for the US 600 MHz Band (Incentive Auction)*, at p. 13 (January 2014) ("NERA Report").

¹⁵ NERA Report at pp. 14-15.

¹⁶ See Blooston Comments at pp. 1-2 (noting that the use of PEAs would "offer inadequate improvement over EA licensing for the many Blooston Rural Carriers that provide service in the

As the Blooston Rural Carriers make clear, because PEA boundaries in Midwestern and Western states largely follow current EA boundaries, states such as North Dakota, South Dakota, Montana, Wyoming, New Mexico, and Nevada would see little improvement from the use of PEAs under the current CCA proposal instead of EAs.¹⁷ For providers in these states, and several others, use of PEAs would preclude auction participation in much the same way as EAs.

For its part, NEP would have to bid on two PEAs covering over 1.9 million people across 18 counties in order to cover its current service area. If the Commission were to adopt CMA-based licenses instead, NEP would only need to successfully bid on three CMAs covering a modest, yet very practical, eight counties in total. These three rural CMAs have a total population of slightly more than 1.1 million. While not a perfect match, CMAs are a much better fit with NEP's current licensed and operating footprint than PEAs or EAs.

IV. THE RWA/NTCA PROPOSAL WOULD ALLOW FOR ROBUST AUCTION PARTICIPATION BY ALL CARRIERS, INCLUDING NEP.

In the event the Commission decides against using all 734 CMAs as geographic license areas in a single phase auction, NEP believes that the alternative RWA/NTCA Proposal will maximize carrier participation and offer the best opportunity for a successful Incentive Auction. The two-phase Incentive Auction framework 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 MSAs.¹⁸ A Second Phase Forward Auction would auction the remaining 428 RSAs. Although the use of CMAs would best allow NEP and

West and Midwestern states"); *see also* Peoples Comments at pp. 2-3 (stating that a PEA overlapping portions of its study area is too large, and use of PEA geographic license areas may preclude its participation in the Incentive Auction).

¹⁷ Blooston Comments at p. 5. PEAs in Texas pose similar issues for at least some carriers. *See* Peoples Comments at pp. 2-3.

¹⁸ *See* Joint Association Comments at p. 10.

other small and rural carriers to compete for licenses in the Incentive Auction, under the RWA/NTCA Proposal, NEP would be able to participate in the Incentive Auction and reasonably compete for the licenses necessary for it to timely deploy new services to the people who live, work and travel through NEP's rural service area.

V. CONCLUSION.

NEP strongly encourages the Commission to adopt CMAs when awarding these valuable 600 MHz licenses. In the event that the Commission decides to use an alternative geographic licensing scheme, NEP supports the RWA/NTCA Proposal. Only by adopting licensing areas that are sufficiently small to provide small and rural carriers, such as NEP, a meaningful opportunity to participate in the Incentive Auction will the Commission meet the statutory mandate of Section 309(j) of the Act.

Respectfully submitted,

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