

**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

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

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**TABLE OF CONTENTS**

**PAGE NO.**

**SUMMARY ..... i**

**I. THE COMMISSION SHOULD ADOPT CMAs TO MEET THE STATUORY MANDATES OF SECTION 309(j) OF THE ACT. ....2**

**II. THE PROPOSED PEAs ARE TOO LARGE TO ENSURE THE LEVEL OF AUCTION PARTICIPATION NECESSARY TO ENSURE THE DISSEMINATION OF LICENSES TO SMALL BUSINESSES AND RURAL TELEPHONE COMPANIES.....7**

**III. BECAUSE PEAs HAVE BEEN HAND-SELECTED, THEY MAY BE SUBJECT TO INDIVIDUAL MODIFICATION PETITIONS AND JUDICIAL CHALLENGE.....11**

**IV. GEOGRAPHIC LICENSE AREA “NESTING” IS NOT STATUTORILY REQUIRED, NOR IS IT NECESSARY TO CONDUCT A SUCCESSFUL INCENTIVE AUCTION.....12**

**V. THE TWO-PHASE AUCTION PROPOSED BY THE ASSOCIATIONS IS STATUTORILY PERMISSIBLE AND HAS THE ADDED BENEFIT OF ENSURING THAT SUFFICIENT FUNDS ARE RAISED TO MAKE THE INCENTIVE AUCTION A SUCCESS.....16**

**VI. AS AN ALTERNATIVE TO A TWO-PHASE AUCTION, THE FCC MAY ADOPT A SINGLE AUCTION FORMAT BASED ON THE RWA/NTCA LICENSING FRAMEWORK THAT WILL MEET THE FCC’S OBJECTIVES WHILE SERVING THE NEEDS OF RURAL AMERICA .....18**

**VII. CONCLUSION .....20**

## Summary

The Rural Wireless Association, Inc. (“RWA”) and NTCA - the Rural Broadband Association (“NTCA”) (collectively “the Associations”) continue to urge the Federal Communications Commission (“FCC” or “Commission”) to license the 600 MHz spectrum on the basis of Cellular Market Areas (“CMAs”), which will provide rural carriers the best opportunity for meaningful auction participation in accordance with the Commission’s statutory obligations under Section 309(j) of the Communications Act of 1934, as amended. Neither public policy goals, nor the complexities particular to this auction, obviate the need for the Commission to comply with Section 309(j)’s requirements.

If the Commission decides against using CMAs, it should adopt the Associations’ two-phase auction proposal. This proposal would allow the Commission to conduct the reverse auction and repacking with 176 licenses and ensure that rural carriers have access to geographic licenses that are small enough to allow for meaningful auction participation. Contrary to CCA’s contention, the Joint Proposal is statutorily permissible because: (1) Section 6403(e) of the *Spectrum Act* does not limit the Commission to a single Forward Auction; and (2) the Joint Proposal does not suggest that the Commission hold more than one auction, but rather that it hold a single Forward Auction in two phases.

If the Commission finds that a two-phase auction is not optimal, the Commission could obtain the same benefits from a single-phase auction by designating the Metropolitan Statistical Area(s) (“MSA”) located within a single Economic Area (“EA”) as a single license and also auctioning each Rural Service Area (“RSA”) as a separate license. With this option, there are 152 EAs (containing 306 populated MSAs grouped together by EA to form individual licenses), the Gulf of Mexico, and 428 RSAs for a total of 581 license areas. The Commission could

further reduce the number of license areas by identifying contiguous MSAs as one lot, or even combining the top 25 or 50 contiguous MSAs into one lot.

Although the Partial Economic Areas (“PEAs”) proposed by CCA are flawed and do not work as well as CMAs, the Associations’ Joint Proposal, or the single phase auction described above, PEAs are an improvement over EAs. However, PEAs, as presently drawn, are still too large to ensure the necessary auction participation by small businesses and rural telephone companies. Further, and in contrast to licenses based on an FCC-recognized and utilized market size like CMAs, licenses based on the hand-drawn PEAs (which have already been reconfigured once) will be subject to individual carrier modification petitions and possibly to judicial challenge as being arbitrary and capricious.

Several commenters have expressed support for PEAs because they “nest” within or can be combined to form larger regions, an attribute that is helpful in the context of package bidding. The appropriate geographic licensing area should not be selected on the basis of whether the license area “nests” within larger areas. The Commission is statutorily required to prescribe area designations that ensure that small and rural carriers have a meaningful opportunity to participate in a spectrum auction; it is *not* statutorily required to ensure that large and regional carriers are able to obtain neat packages of licenses that fit squarely within their existing service territories, particularly when doing so will force rural carriers to bid on license areas that extend beyond their service territories and are so large as to make participation in the auction all but impossible.

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

The Rural Wireless Association, Inc. (“RWA”) and NTCA - the Rural Broadband Association (“NTCA”) (collectively “the Associations”) hereby file these joint reply comments in response to comments filed by various parties with regard to the *Public Notice*<sup>1</sup> released by the Wireless Telecommunications Bureau (“WTB”) of the Federal Communications Commission (“FCC” or “Commission”) seeking comments on the Competitive Carriers Association (“CCA”) proposal to license the 600 MHz Band in the TV Broadcast Incentive Auction (“Incentive Auction”) using Partial Economic Areas (“PEAs”)<sup>2</sup> as well as other new geographic licensing proposals, including the Associations’ Joint Proposal.<sup>3</sup> The Associations, among many other

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<sup>1</sup> *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*”).

<sup>2</sup> Letter from Rebecca Murphy Thompson, General Counsel, Competitive Carriers Association, to Marlene H. Dortch, Secretary, FCC (Nov. 27, 2013) (“*CCA PEA Ex Parte*”); Letter from C. Sean Spivey, Competitive Carrier Association, to Marlene Dortch, Secretary, FCC (Dec. 23, 2013) (“*CCA Revised PEA Ex Parte*”).

<sup>3</sup> Letter from Caressa Bennet, Rural Wireless Association, and Jill Canfield, National Telecommunications Cooperative Association to Marlene Dortch, Secretary, Federal Communications Commission (Dec. 6, 2013) (“*Joint Proposal*”).

commenters, continue to urge the Commission to license this valuable 600 MHz spectrum on the basis of Cellular Market Areas (“CMAs”).<sup>4</sup> CMAs will provide rural carriers with the best opportunity to meaningfully participate in the auction in accordance with the Commission’s statutory obligations pursuant to Section 309(j) of the Communications Act of 1934, as amended (the “Act”), and will increase competition and ensure the timely deployment of vital services to rural America.

**I. THE COMMISSION SHOULD ADOPT CMAs TO MEET THE STATUORY MANDATES OF SECTION 309(j) OF THE ACT.**

Adoption of CMAs<sup>5</sup> or the Joint Proposal, is the most clear and straightforward means by which the Commission can ensure that it has complied with Section 309(j) of the Act.<sup>6</sup> When prescribing regulations for awarding licenses for new services through competitive bidding, the Commission must adopt rules that protect the public interest by making radio communications services available to *all* people of the United States.<sup>7</sup> The Commission’s rules must also promote certain objectives, including deploying services to people residing in rural areas and promoting economic opportunity and competition by avoiding the excessive concentration of licenses and disseminating licenses to a wide variety of applicants, including small businesses and rural telephone companies.<sup>8</sup> Section 309(j)(4)(C) of the Act states the Commission *shall...*

consistent with the public interest, convenience, and necessity, the purposes of this Act, and the *characteristics of the proposed service,*

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<sup>4</sup> CMAs are comprised of 306 Metropolitan Statistical Areas (“MSAs”) and 428 Rural Service Areas (“RSAs”). In their comments in this proceeding, the Associations mistakenly stated there are 429 RSAs.

<sup>5</sup> See Comments of King Street Wireless, L.P., GN Docket Nos. 12-268 and 13-185 at p. 4 (filed Jan. 9, 2014) (“King Street Comments”) (“CMAs would facilitate Commission compliance with its statutory mandates”).

<sup>6</sup> PEAs as currently proposed do not comply with Section 309(j); however, PEAs are capable of complying with Section 309(j) if they are modified from CCA’s current proposal.

<sup>7</sup> See 47 U.S.C. § 151 (emphasis added).

<sup>8</sup> See 47 U.S.C. §§ 309(j)(3)(A)-(B).

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.<sup>9</sup>

In addition, Section 309(j)(3) of the Act states that the Commission, in designing its systems of competitive bidding, shall

include safeguards to protect the public interest in the use of the spectrum and *shall seek to promote...* the following objectives: (A) 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; (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 [and] rural telephone companies...<sup>10</sup>

Section 309(j) is the touchstone whenever the Commission adopts rules to implement a spectrum auction. Yet Verizon in its comments treats the statutory charge of Section 309(j) as if it were co-equal with – or could even be trumped by – Verizon’s own desired policy outcome. Specifically, Verizon states that “[c]hoosing a geographic license area requires a careful balancing of the Commission’s *public interest goals* of encouraging widespread geographic buildout, including in rural areas, and providing licensees with sufficient flexibility to scale their networks.”<sup>11</sup> However, there is no mandate that the Commission engage in such balancing. To the contrary, there is a clear Congressional mandate that the Commission prescribe area designations that promote economic opportunity for small businesses and rural carriers and promote the buildout of wireless services to rural America. This is not merely a “*public interest*

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<sup>9</sup> 47 U.S.C. § 309(j)(4) (C) (emphasis added).

<sup>10</sup> 47 U.S.C. §§ 309(j)(3)(A)-(B).

<sup>11</sup> Comments of Verizon and Verizon Wireless, GN Docket Nos. 12-268 and 13-185 at p. 3 (filed Jan. 9, 2014) (“Verizon Comments”) (emphasis added).

*goal*” of the Commission; it is a direct Congressional mandate that is clearly outlined in Section 309(j) of the Communications Act. Verizon is correct that providing licensees sufficient flexibility to scale their networks *is* a public interest goal that may be addressed by the Commission, but not to the exclusion of the statutory *mandates* of Section 309(j).

The Commission may not ignore Section 309(j) just because the Incentive Auction includes complexities that may have been missing in previous auctions. While Section 309(j)(3)(C) directs the Commission to “prescribe area designations” on the basis of the “characteristics of the proposed *service*”<sup>12</sup> the Act does not allow the Commission to adopt geographic license areas for the proposed service based solely on the characteristics of the particular *auction*. The Commission cannot justify the use of EAs or the currently proposed PEAs, which are too large to ensure small businesses and rural carriers have the ability to participate in the auction and will adversely impact the deployment of services to rural areas, based solely on perceived complexities of the Incentive Auction.

The Associations and the majority of other commenters in this proceeding support the adoption of CMAs for the Incentive Auction.<sup>13</sup> United States Cellular Corporation (“U.S.

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<sup>12</sup> The FCC proposes to allocate the 600 MHz spectrum for “flexible use.”

<sup>13</sup> See Comments of United States Cellular Corporation, GN Docket Nos. 12-268 and 13-185 at pp. 9, 25 (filed Jan. 9, 2014) (“U.S. Cellular Comments”); King Street Comments at pp. 6-7 (filed Jan. 9, 2014); Supplemental Comments of Competitive Carriers Association Regarding the Use of “Partial Economic Areas,” GN Docket Nos. 12-268 and 13-185 at pp. 1-2 (filed Jan. 9, 2014) (“CCA Comments”); Supplemental Comments of The Wireless Internet Service Providers Association, GN Docket Nos. 12-268 and 13-185 at p. 2 (filed Jan. 9, 2014) (“WISPA Comments”) (use of CMAs would encourage greater auction participation and be consistent with statutory requirements); Comments of Public Service Wireless, Inc., GN Docket Nos. 12-268 and 13-185 at p. 3 (filed Jan. 9, 2014) (“PSW Comments”) (use of CMAs will promote competition and the public interest); Comments of Peoples Telephone Cooperative, Inc., GN Docket Nos. 12-268 and 13-185 at p. 2 (filed Jan. 9, 2014) (“PTC Comments”) (use of small geographic license areas, like CMAs, will equitably balance “the concerns of wireless carriers large and small to obtain spectrum that fits their business plans,” and satisfy the Commission’s statutory requirements spectrum availability in rural areas); Comments of the Blooston Rural

Cellular”) correctly points out that CMA-based licensing will spur auction participation, maximize auction revenue, increase competition, promote rural deployments, and benefit all carriers.<sup>14</sup> U.S. Cellular also correctly noted in the comments it filed last January that

CMAs must be designated as 600 MHz market areas in order for small markets and rural areas to be adequately served and a diversity of licensees to be achieved.<sup>15</sup> These smaller license areas are necessary to preserve opportunities for small and regional carriers, as well as new entrants, to provide an important source of competition, variety and diversity in rural and less densely populated areas.<sup>16</sup>

U.S. Cellular also points out that the Commission itself has observed the importance of adopting CMAs, which ““permit entities who are only interested in serving rural areas to acquire spectrum licenses for these areas alone and avoid acquiring spectrum licenses with high population densities that make purchase of license rights too expensive for these types of entities.””<sup>17</sup> U.S. Cellular also correctly states that CMAs “represent known area sizes to many

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Carriers, GN Docket Nos. 12-268 and 13-185 at p. 10 (filed Jan. 9, 2014) (“Blooston Carrier Comments”) (CMA licensing is key to “getting the incentive auction right”); Comments of Atlantic Telephone Membership Corporation, FTC Management Group, Inc., Horry Telephone Cooperative, Inc., Piedmont Rural Telephone Cooperative, Inc., and Sandhill Telephone Cooperative, Inc., GN Docket Nos. 12-268 and 13-185 at pp. 3-4 (filed Jan. 9, 2014) (“Carolina Company Comments”) (CMAs will promote competition and the public interest);

<sup>14</sup> U.S. Cellular Comments at pp. 9, 25.

<sup>15</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022, 1061 (2002) (“Lower 700 MHz R&O”) (“Licensing a portion of the Lower 700 MHz Band over [CMAs] balances the playing field such that small and rural providers will have an opportunity to participate in the auction and the provision of spectrum-based services.”).

<sup>16</sup> Comments of U.S. Cellular, Docket No. 12-268 at p. 11 (filed January 25, 2013) (“U.S. Cellular January 2013 Comments”) *citing* *Service Rules for Advanced Wireless Service in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14058, 14064 (2005) (“AWS-1 Recon Order”) (“[W]e find that more spectrum should be licensed on an RSA/MSA basis to meet the needs of rural carriers...”); *Id.* at 14065 (“[T]hese types of smaller geographic service areas provide entry opportunities for smaller carriers, new entrants, and rural telephone companies.”).

<sup>17</sup> U.S. Cellular January 2013 Comments at p. 11 *citing* *Service Rules for Advanced Wireless Service in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, 25177 (2003)

business entities, especially small regional and rural providers,”<sup>18</sup> and they “correspond to the needs of many customers, including customers of small regional and rural providers.”<sup>19</sup>

The Associations agree with King Street Wireless, which urges the Commission to adopt CMAs because CMAs will increase auction competition and revenues, improve coverage, and increase the amount of spectrum available for auction.<sup>20</sup> Even CCA, whose alternative proposal is the subject of the *PEA Public Notice*, strongly supports the use of CMAs. CCA correctly states that 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 products and services to rural America, and likely boost overall auction revenues.<sup>21</sup> CCA also supports CMAs “because they would maximize the relevant benefits and are familiar to industry participants based on their use in prior auctions.”<sup>22</sup> While EAs and PEAs, particularly PEAs west of the Mississippi River, are too large to ensure rural carriers and small businesses have a meaningful opportunity to participate in the auction,<sup>23</sup> only CMAs are

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(“AWS-1 R&O”); *See also* Lower 700 MHz R&O, 17 FCC Rcd at 1061 (“[CMAs] can be the focus of smaller carriers that do not wish to bid on or provide service to larger regions.”).

<sup>18</sup> U.S. Cellular January 2013 Comments at p. 11 *citing* Lower 700 MHz R&O, 17 FCC Rcd at 1061.

<sup>19</sup> *Id.*

<sup>20</sup> King Street Comments at pp. 6-7.

<sup>21</sup> CCA Comments at pp. 1-2.

<sup>22</sup> CCA Comments at p. 4.

<sup>23</sup> *See* Blooston Carrier Comments at pp. 5-6; PTC Comments at pp. 2-3; *See also* 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

small enough to meet the needs of small businesses and rural carriers and thus satisfy the statutory requirements of Section 309(j).<sup>24</sup>

## **II. THE PROPOSED PEAs ARE TOO LARGE TO ENSURE THE LEVEL OF AUCTION PARTICIPATION NECESSARY TO ENSURE THE DISSEMINATION OF LICENSES TO SMALL BUSINESSES AND RURAL TELEPHONE COMPANIES.**

Initially, it is important to note that no commenter in this proceeding (other than Verizon and C-Spire, who support the adoption of EAs,<sup>25</sup> and AT&T, who supports EAs, but indicates PEAs could be worked into its hierarchical bidding proposal<sup>26</sup>) favors PEAs over CMAs. T-Mobile indicated in comments that PEAs might be a reasonable alternative to larger geographic licensing areas,<sup>27</sup> but has since filed an *ex parte* letter with the Commission indicating smaller license areas, including CMAs, are acceptable provided the Commission adopts spectrum limits and rejects package bidding.<sup>28</sup> Indeed, “in making its alternative proposal, CCA made it clear that CMA-sized licensing is the best plan and that the PEA approach constituted a lesser of two

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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”).

<sup>24</sup> *See* note 13 *infra*.

<sup>25</sup> Verizon comments at p. 1; Supplemental Comments of Cellular South, Inc. on Proposed Use of “Partial Economic Areas,” GN Docket No. 12-268 at p. 2 (filed Jan. 9, 2014) (“C-Spire Comments”).

<sup>26</sup> Comments of AT&T, GN Docket Nos. 12-268, 13-185 at p. 8 (filed Jan. 9, 2014) (“AT&T Comments”).

<sup>27</sup> Comments of T-Mobile USA, Inc., GN Docket No. 12-268, at p. 2 (filed Jan. 9, 2014) (“T-Mobile Comments”).

<sup>28</sup> Letter from Trey Hanbury, Counsel to T-Mobile USA, Inc. to Marlene Dortch, Secretary, Federal Communications Commission (January 15, 2014) (“T-Mobile Ex Parte”).

evils approach to the Commission’s EA proposal.”<sup>29</sup> Accordingly, all record support for PEAs from small and rural carriers is in the context of carriers who support PEAs only if the FCC declines to adopt the preferred CMAs.

CCA argues that “[PEAs] 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.”<sup>30</sup> However, rural providers indicate that is not true, particularly for PEAs located west of the Mississippi River. Many commenters, including, U.S. Cellular,<sup>31</sup> Peoples Telephone Cooperative, Inc. (“PTC”),<sup>32</sup> and the 32 Blooston Carriers (“Blooston Carriers”),<sup>33</sup> have stated that the PEAs, as currently proposed, are too large to meet many rural carrier needs. PTC has also said it “would be unable to serve the entirety of [the PEA area] and will very likely not be able to participate in the auction”<sup>34</sup> if the Commission adopts the PEAs as currently proposed. Many commenters correctly note that EAs and PEAs,

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<sup>29</sup> Blooston Carrier Comments at p. 5.

<sup>30</sup> CCA Comments at p. 5.

<sup>31</sup> U.S. Cellular Comments at p. 6.

<sup>32</sup> PTC Comments at p. 3.

<sup>33</sup> Blooston Carrier Comments at p. 5 (“PEAs, in many cases, do not provide a meaningful improvement for small and independent service providers in terms of 600 MHz band initial licensing opportunities.”) The Blooston Carriers include: Alliance Communications Cooperative; Beresford Municipal Telephone; Brookings Municipal Utilities d/b/a Swiftel Communications; Copper Valley Wireless, LLC; CRST Telephone Authority; Faith Municipal Telephone; FMTC Wireless, Inc. d/b/a OmniTel Communications; Fort Randall Telephone Company; Fuego Wireless, LLC; Golden West Telecommunications Cooperative; Interstate Telecommunications Cooperative; James Valley Telecommunications Cooperative; Kennebec Telephone Company; Long Lines Midstate Communications Cooperative; Nucla-Naturita Telephone Company; Peñasco Valley Telephone Cooperative; RC Communications; Roberts County Telephone Cooperative Association; Santel Communications Cooperative; South Dakota Telecommunications Association; Strata Networks; Table Top Telephone Company; The Ponderosa Telephone Company; TrioTel Communications Cooperative; Valley Telecommunications Cooperative; Venture Communications Cooperative; West River Cooperative Telephone Company; West River Telecommunications Cooperative; Western Telephone; Winnebago Cooperative Telecom Association; and xG Technology, Inc.

<sup>34</sup> PTC Comments at p. 3.

particularly PEAs west of the Mississippi River, are too large to ensure rural carriers and small businesses have a meaningful opportunity to participate in the auction,<sup>35</sup> while CMAs are small enough to both meet the needs of small businesses and rural carriers and satisfy the statutory requirements of Section 309(j).<sup>36</sup>

The Blooston Carriers found that a “review of the proposed PEA boundaries shows that proposed ‘new’ service areas in the Midwestern and Western states are often identical to current EA boundaries. Because these areas are predominantly rural, additional subdivision of EAs in states west of the Mississippi River are minimal.”<sup>37</sup> The purpose of offering the Commission alternatives to EAs was to provide small and rural carriers access to reasonably-sized geographic license areas. Unfortunately, the proposed PEAs fail to reduce the geographic license areas of some of the most rural areas of the United States - those west of the Mississippi River. PEAs that are the size of EAs do not meet the needs of small and rural carriers that seek spectrum to provide service to rural areas.

The Commission has an obligation to adopt geographic license areas that provide *rural* carriers access to 600 MHz spectrum and promote the deployment of services to *rural* consumers. The proposed PEAs create smaller-sized licenses only on the Eastern Seaboard,

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<sup>35</sup> See PTC Comments at pp. 2-3; See also Blooston Carrier Comments at pp. 5-6 (certain PEA boundaries are identical to EA boundaries and without splitting PEAs west of the Mississippi River, PEAs appear too large for most small and rural carriers); PSW Comments at p. 2 (“EAs [are] ‘too large for small and rural operators to obtain at auction or deploy.’” citing *Public Notice* at p.1; See also Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Gregory W. Whiteaker, Counsel for Public Service Wireless Services, Inc., *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 (Sept. 18, 2013).); 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.

<sup>36</sup> See Note 13, *infra*.

<sup>37</sup> Blooston Carrier Comments at p. 5 (*referencing CCA First PEA Ex Parte and CCA Second PEA Ex Parte*).

which does not fulfill this statutory mandate. If PEAs are ultimately adopted by the FCC, they must be redrawn to address rural carriers and consumers across the country; they must be redrawn in a manner that decreases the geographic license sizes, correspondingly increasing the number of PEAs.<sup>38</sup>

Several commenters have indicated they will be unable to participate in the auction if the Commission adopts PEAs as currently drafted.<sup>39</sup> The comments in this proceeding clearly show that the boundaries of PEAs, particularly those located west of the Mississippi River, are still too large to afford rural carriers an opportunity to participate in the auction and provide service to rural consumers.<sup>40</sup> While Public Service Wireless Services, Inc. (“PSW”)<sup>41</sup> and the Carolina Companies<sup>42</sup> support the adoption of PEAs if the Commission declines to adopt CMAs, these carriers are located in the Southeast where proposed PEA license areas are significantly smaller than PEAs located West of the Mississippi River. As presently constituted, the 390 PEAs are not a viable alternative to CMAs.

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<sup>38</sup> The Associations will participate in crafting newly-sized license areas if CMAs are not adopted, however before working through this exercise, the Associations need to know the maximum number of license areas the FCC is willing to entertain. If 734 CMAs are too many and 390 PEAs are too few, the Associations propose that the FCC settle at a number that it can design its auction around and get the industry to work together toward that number. It is imperative that the industry receive guidance from the Commission with respect to this basic question if it is going to quickly move the ball forward.

<sup>39</sup> See PTC Comments at pp. 2-3; Blooston Carrier Comments at pp. 5-6.

<sup>40</sup> See Blooston Carrier Comments at p. 5 and PTC Comments at p. 3.

<sup>41</sup> PSW Comments at p. 1.

<sup>42</sup> Carolina Company Comments at pp. 1-2. The Carolina Companies include Atlantic Telephone Membership Corporation, FTC Management Group, Inc., Horry Telephone Cooperative, Inc., Piedmont Rural Telephone Cooperative, Inc., and Sandhill Telephone Cooperative, Inc. (collectively referred to as the “Carolina Companies”).

### **III. BECAUSE PEAs HAVE BEEN HAND-SELECTED, THEY MAY BE SUBJECT TO INDIVIDUAL MODIFICATION PETITIONS AND JUDICIAL CHALLENGE.**

Should the Commission adopt the current PEAs rather than CMAs, the Commission will likely be faced with petitions seeking modification of individual PEAs. While CCA contemplates re-drawing the PEAs to accommodate individual carrier needs, regardless of when and how this redrawing takes place, there will still be many carriers who are likely to seek further modification of individual PEAs. Addressing individual petitions seeking changes to the PEAs will be complex and time consuming. In addition, the Commission should develop clear standards for determining which counties should belong in which PEA market area, to avoid litigation challenging the formation of the PEAs.

Due to the hand-selected nature of the PEAs, it is highly likely that individual PEAs will be the subject of carrier petitions that they be re-drawn to remove and add counties. CCA has already revised the PEAs up from 351 to 390 PEAs to address carrier concerns, and continues to contemplate further revisions. Verizon has indicated in its comments that the Chicago PEA does not include Lake and McHenry counties, which it contends are “are an important part of the Chicago market. As a result, a significant part of the Chicago area would be excluded from that PEA...”<sup>43</sup> If the Commission adopts PEAs, it is likely that many carriers would petition the Commission to reduce the size of the PEAs covering their service territories, while other carriers would petition the Commission to increase the size of certain PEAs.<sup>44</sup>

The Associations concur with King Street Wireless that the Commission has historically adopted, and should continue to adopt, geographic license areas based on existing market

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<sup>43</sup> Verizon Comments at p. 7.

<sup>44</sup> See Blooston Carrier Comments at p. 6 (PEAs are too large west of the Mississippi River); See also Verizon Comments at pp. 7-8 (Chicago PEA should be revised to ensure urban areas are included in Chicago PEA and other PEAs may also need to be similarly revised).

definitions.<sup>45</sup> In past auctions where the Commission created “new” geographic areas, such as Major Economic Areas (“MEAs”) and Regional Economic Area Groupings (“REAGs”),<sup>46</sup> the license areas were based on existing market definitions. King Street Wireless notes that license market definitions “must contribute to the overall integrity of the auction process...”<sup>47</sup> The Commission must consider how it will resolve disputes between carriers over which counties belong in which PEAs.

If the Commission determines that it will use PEAs for this auction, it should establish criteria for determining which counties should be included in which PEA to avoid potential individual carrier petitions and judicial challenges.

#### **IV. GEOGRAPHIC LICENSE AREA “NESTING” IS NOT STATUTORILY REQUIRED, NOR IS IT NECESSARY TO CONDUCT A SUCCESSFUL INCENTIVE AUCTION.**

Several commenters have expressed their support for geographic license areas that “nest” within or can be combined to form larger regions,<sup>48</sup> contending that such a configuration would lessen “exposure risk”<sup>49</sup> and allow carriers to more efficiently combine the new licenses with

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<sup>45</sup> King Street Comments at p. 5. *See also* CCA Comments at p. 4 supporting the adoption of CMAs because they “are familiar to industry participants based on their use in prior auctions.”

<sup>46</sup> MEAs were created by Commission staff and are an aggregation of Economic Areas (“EAs”) into 52 regions. EAs were delineated by the U.S. Department of Commerce Bureau of Economic Analysis in 1995. REAGs were also developed by Commission staff, but are an aggregation of MEAs into 12 regions. *See* The Wireless Communications Service, 62 Fed. Reg. 9,636 (Mar. 3, 1997); *see also* Final Redefinition of the BEA Economic Areas, 60 Fed. Reg. 13,114 (Mar. 10, 1995).

<sup>47</sup> King Street Comments at p. 5 (advocating which already-established license market areas should be utilized in the 600 MHz auction is legitimate advocacy while allowing “select would-be auction participants [to]hand-craft license areas to their particular liking, and to their advantage in the auction itself... comes far closer to constituting gerrymandering.”).

<sup>48</sup> *See* T-Mobile Comments at p. 8; Verizon Comments at p. 7; *see also* AT&T Comments at pp. 6-7 (stating that the “hierarchy” in its “hierarchical package bidding proposal” consists of 176 EAs nested within 52 MEAs... nested within 12 REAs... nested within the nation as a whole”).

<sup>49</sup> Verizon Comments at p. 4 defining “exposure risk” as “[w]hen some bidders value a collection of licenses more than the sum of the value of licenses individually...” Such bidders, in

existing holdings.<sup>50</sup> The Commission is not required by the *Spectrum Act*<sup>51</sup> to adopt geographic licensing areas that nest within larger geographic license areas. In fact, the *Spectrum Act* does not even discuss geographic license area nesting. Rather, the large, national carriers have sought nested geographic license areas in the context of their support for package bidding.<sup>52</sup> The Commission should not select the appropriate geographic licensing area for the Incentive Auction on the basis of whether the license area “nests” within larger areas. Selecting license areas based on nesting will make it easier for these large carriers to implement packaging bidding only by preventing many small and rural service providers from participating in the auction. The Commission is statutorily required by Section 309(j) to prescribe area designations that promote economic opportunity for small businesses and rural carriers, promote the rapid deployment of new technologies to consumers in rural areas, and ensure small businesses and rural carriers have a meaningful opportunity to participate in the auction. The Commission is *not* statutorily required to ensure that large and regional carriers are able to obtain neat packages of licenses that fit squarely within their existing service territories, particularly when doing so will

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attempting to acquire the full collection, may fail to achieve that goal and can end the auction paying more for a smaller subset of licenses than they are actually worth.).

<sup>50</sup> Verizon Comments at p. 7.

<sup>51</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 125 Stat. 156 (2012) (“*Spectrum Act*”).

<sup>52</sup> Comments of AT&T, Inc., *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268 at p. 54 (filed Jan. 25, 2013) (“AT&T Jan. 2013 Comments”) (stating that the “the Commission should reduce computational complexity by specifying allowable package bids such that each pre-defined package is fully nested within the next-larger pre-defined package in a clear hierarchy”). See also AT&T Comments at p. 8 (stating “the Commission should adopt AT&T’s hierarchical [package] bidding proposal, complete with EAs as the basic geographic unit. If the Commission wishes to adopt a smaller basic geographic unit, however, PEAs could be worked into AT&T’s hierarchical bidding proposal, as long as PEAs fully nest within EAs”); Verizon Comments at p. 1 (stating that “if the Commission were to adopt smaller license area sizes [like PEAs], to achieve these goals licenses should ‘nest’ into existing EAs and, as with EAs, auction participants should be permitted to combine licenses through package bids”).

significantly reduce, if not eliminate, small and rural carrier participation in the auction. As noted by PTC, in its comments, the desire of large carriers<sup>53</sup> to “nest” licenses within their existing service territories does not obviate the Commission’s statutory obligation to accommodate small business and rural carrier participation in the Incentive Auction.<sup>54</sup>

CCA<sup>55</sup> and AT&T<sup>56</sup> contend that PEAs are an appropriate choice because they “nest” within EAs. While this feature may be useful for large carriers (particularly those that support package bidding), the current service areas of many small and rural service providers consist primarily or even exclusively of CMA-based license areas,<sup>57</sup> which poses a problem for such carriers. As U.S. Cellular correctly notes, “because PEAs ‘nest’ within the geographic boundaries of EAs, and thus do not align with the geographic boundaries of CMAs, smaller carriers could be forced to acquire spectrum rights outside of their existing service areas simply to upgrade their current networks.”<sup>58</sup>

Nesting is not necessary to conduct a successful Incentive Auction. The Associations agree with King Street Wireless that “notwithstanding the purported difficulty that large carriers claim to have in acquiring regional or national footprints, they have been able to accomplish that, time and time again.”<sup>59</sup> Large providers have been able to acquire spectrum by successfully bidding

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<sup>53</sup> PTC highlights the fact that PEAs were created, in part, because of “larger carriers’ concerns that CMA licenses would not ‘nest’ into EAs.” PTC Comments at p. 1.

<sup>54</sup> 47 U.S.C. § 309(j). *See also* PTC Comments at p. 4 (stating that the “primary focus of the Commission” should be “meeting its statutory duty to make spectrum-based services available to consumers in rural and urban areas, and not addressing very limited ‘nesting’ concerns”).

<sup>55</sup> CCA Comments at p. 6.

<sup>56</sup> AT&T Comments at p. 8.

<sup>57</sup> U.S. Cellular Comments at p. 30.

<sup>58</sup> U.S. Cellular Comments at p. 6.

<sup>59</sup> King Street Comments at p. 6.

in previous spectrum auctions, and by consolidating spectrum on the secondary market.<sup>60</sup> Large and regional carriers do not *need* nesting to be able to participate in the auction or deploy a successful wireless service. On the other hand, small and rural carriers *need* the Commission to adopt geographic license areas that are small enough to provide them a meaningful opportunity to participate in the auction. PEAs may nest within EAs,<sup>61</sup> but they are not sufficiently small to comply with the statutory requirements of Section 309(j).

Verizon argues that nesting is necessary to implement package bidding and limit its “exposure risk.”<sup>62</sup> Verizon’s concern with regard to exposure risk is that if the FCC adopts smaller license areas and does not adopt package bidding, national and regional carriers might not win the full package of contiguous licenses they seek to acquire. According to Verizon, gaps in licensing may result in a carrier being required to enter into roaming agreements with neighboring service providers to ensure its customers have coverage outside the carrier’s service territory.<sup>63</sup> However, commercially reasonable roaming agreements between 600 MHz licensees would significantly reduce the impact the failure to obtain a license for a particular service territory would have on an incentive auction bidder.

Verizon also contends that smaller licenses should “nest” within EAs to help wireless providers “more efficiently combine the new licenses with existing 700 MHz and AWS mobile broadband deployments.”<sup>64</sup> However, the nation’s two largest carriers have “largely nationwide

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<sup>60</sup> See Comments of the Rural Wireless Association, Inc. and NTCA – The Rural Broadband Association, GN Docket Nos. 12-268 and 13-185 at p. 18, n. 38 (filed Jan. 9, 2014) (noting that “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,” and providing a list of recent spectrum acquisitions by larger carriers).

<sup>61</sup> CCA Comments at p. 6.

<sup>62</sup> Verizon Comments at p. 4.

<sup>63</sup> Verizon Comments pp. 2-3.

<sup>64</sup> Verizon Comments at p. 7.

850 MHz systems” licensed on the basis of CMAs.<sup>65</sup> Also, one of those carriers has a virtual nationwide Lower Band 700 MHz system that consists largely of CMA licensed systems.<sup>66</sup> Use of CMA licenses in the past speaks for, not against, use of CMAs again in the Incentive Auction.

**V. THE TWO-PHASE AUCTION PROPOSED BY THE ASSOCIATIONS IS STATUTORILY PERMISSIBLE AND HAS THE ADDED BENEFIT OF ENSURING THAT SUFFICIENT FUNDS ARE RAISED TO MAKE THE INCENTIVE AUCTION A SUCCESS.**

The Joint Proposal would allow the Commission to conduct the reverse auction, repacking and first phase forward auction for the MSA(s) in each EA. The remaining RSAs would be auctioned in a second-phase forward auction. This two-phase process would allow the Commission to conduct the reverse auction and repacking with 176 licenses, which might reduce auction implementation risks, while ensuring rural carriers have access to geographic license areas that are small enough to allow them to meaningfully participate in the auction.

CCA improperly challenges the Commission’s statutory authority to conduct a two-phase auction.<sup>67</sup> Section 6403(e) of the Spectrum Act specifically states that the Commission may only conduct a single reverse auction and repack the reclaimed spectrum once.<sup>68</sup> However, the Spectrum Act does *not* limit the Commission to a single Forward Auction. Section 6403(e), which is entitled *Numerical Limitation on Auctions and Reorganization* specifically states “[t]he Commission may not complete more than one reverse auction under subsection (a)(1) or more than one reorganization of the broadcast television spectrum under subsection (b).”<sup>69</sup> However, it is silent with regard to the Forward Auction. If Congress had intended to limit the Commission to a single Forward Auction, it would have stated so in Section 6403(e).

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<sup>65</sup> King Street Comments at p. 6.

<sup>66</sup> *Id.*.

<sup>67</sup> CCA Comments at pp. 9-10.

<sup>68</sup> Spectrum Act at § 6403(e).

<sup>69</sup> Spectrum Act at §6403(e).

Furthermore, the Joint Proposal does not suggest that the Commission hold more than one Forward Auction. Instead, the Associations recommend the Commission hold a single Forward Auction in two phases. Moreover, it is possible that, regardless of the geographic licensing scheme that is ultimately chosen, not all licenses will be sold, resulting in a subsequent auction being held at a future date. This has occurred in prior auctions<sup>70</sup> and it could occur in this one as well. Congress gave the Commission the flexibility it needs to ensure the licensing of the 600 MHz spectrum and did not bind it to a single Forward Auction.

Further, by having the Forward Auction conducted in two phases, the Joint Proposal gives all stakeholders the opportunity to ensure that sufficient funds are raised to cover both the amount needed to pay the broadcasters who are selling spectrum rights through the Reverse Auction as well as the cost of repacking those broadcasters who intend to continue operating. Should there be insufficient funds raised during Phase One, there is an opportunity to raise sufficient funds in Phase Two. Generally, the value of spectrum is based on a megahertz/population formula and spectrum in rural areas has historically been heavily discounted because these areas have a smaller population and a much larger geographic area over which the network has to be built. In fact, this is why rural areas are subsidized by universal service and why the FCC, in recognition of the lower value of spectrum in rural areas, created Mobility Fund Phase I and Mobility Fund Phase II to ensure coverage to these areas. Since the population is typically greater and more concentrated in MSAs than RSAs, the cost of licenses

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<sup>70</sup> See Public Notice, *Auction of 700 MHz Band Licenses Scheduled for July 19, 2011; Comment Sought on Competitive Bidding Procedures for Auction 92*, AU Docket No. 10-248, ¶ 2 (Dec. 15, 2010) (“Auction 92 will offer a total of 16 licenses. These licenses were offered in Auction 73 and remained unsold or were licenses on which a winning bidder defaulted.”).

covering MSAs is generally higher than the cost of rural licenses.<sup>71</sup> The NERA Report states that 90% of the total revenues generated from the Incentive Auction will be generated through the sale of MSA licenses.<sup>72</sup> Since it is anticipated that 90% of the incentive auction revenues will be generated during the first-phase forward auction, including funds to cover broadcaster bids, broadcasters should have no concerns about being funded. CCA also expressed concern with the timing of the second phase forward auction.<sup>73</sup> It is the intention of the Associations that the second phase forward auction would occur quickly after completion of the first-phase forward auction so that both phases would be completed within two months and that auction applicants would file one application and be eligible to participate in one or both phases.

**VI. AS AN ALTERNATIVE TO A TWO-PHASE AUCTION, THE FCC MAY ADOPT A SINGLE AUCTION FORMAT BASED ON THE RWA/NTCA LICENSING FRAMEWORK THAT WILL MEET THE FCC'S OBJECTIVES WHILE SERVING THE NEEDS OF RURAL AMERICA.**

The Joint Proposal was designed as a two-phase auction format in order to accommodate the FCC's desire to limit the number of licenses subject to the reverse auction and repacking process. The Associations continue to believe the two-phase auction format utilizing MSAs and RSAs will provide the FCC with a viable alternative to the proposed EAs as it provides small businesses and rural carriers with access to reasonably sized service areas. However, if the Commission chooses not to adopt the two-phase auction framework, the Associations believe the Commission could obtain the same benefits of making smaller license areas available to rural

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<sup>71</sup> Without the Gulf of Mexico, the 306 MSAs contain approximately 77.5 % of the population covering a land mass area of 610,664 square miles, whereas the 428 RSAs contain 22.5 % of the population spread out over a land mass area of 2,987,305 square miles. From a coverage perspective, the combined RSAs are nearly five times bigger than the combined MSAs.

<sup>72</sup> Richard Marsden, Dr. Chantale LaCasse, and Jonathan Pike, Local and Regional Licensing for the US 600 MHz Band (Incentive Auction) at p. 46 (January 2014) ("NERA Report").

<sup>73</sup> CCA Comments at p. 10.

carriers by adopting the Associations' proposed licensing framework, but conducting a single auction.

If the Commission finds that a two-phase auction is not optimal, the Commission could auction the MSA, or MSAs where there is more than one, located within a single EA as a single license and also auction each RSA as a separate license. There are 152 EAs<sup>74</sup> (containing 306 populated MSAs grouped together by EA to form individual licenses), the Gulf of Mexico, and 428 RSAs for a total of 581 license areas.<sup>75</sup> As noted by NERA Economic Consulting, the Commission is already proposing to hold an auction for 176 licenses, which is a sizeable number.<sup>76</sup> As noted by U.S. Cellular, the Lehr/Musey Study found that “[g]iven its past use of both large and small license territories, the FCC clearly has the expertise to handle an auction with many licenses.”<sup>77</sup> U.S. Cellular also points out that the Lehr/Musey Study “also found that nearly two decades ago the Commission successfully ‘managed auctions with 493 BTA regions,’

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<sup>74</sup> While there are a total of 176 EAs, 23 of those EAs are exclusively rural (containing no MSAs) and one EA is the Gulf of Mexico.

<sup>75</sup> The 581 license areas could be reduced even further by completely disregarding the EA boundaries and identifying the MSAs that are contiguous to one another as one lot. This would bring the number of MSAs to 132 as depicted in the attached map for a total of 561 license areas (132 MSAs, 428 RSAs and the Gulf of Mexico). The number could be further reduced by combining the top 25 MSAs that are contiguous to one another into one lot for 537 license areas as depicted in the attached map. A further reduction to 512 license areas would result if the top 50 contiguous MSAs were combined into one lot. Again, without an understanding of the difficulties the FCC is facing or knowing the maximum number of licenses the FCC can handle in its auction design, the industry is not able to develop a workable solution.

<sup>76</sup> NERA Report at p. 26 (“...the FCC and its advisors are already proposing that the auction design be able to cope with 176 regions, which is a substantial number.”).

<sup>77</sup> U.S. Cellular Comments at p. 31 (*citing* 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. 31 (“Lehr/Musey Study”), attached to Letter from Steven K. Berry, Competitive Carrier Association, to Tom Wheeler, Chairman, FCC, GN Docket No. 12-268 (Nov. 20, 2013)).

and ‘[s]ince then, the experience and expertise of the FCC and the industry in auctions have advanced significantly’”<sup>78</sup>

Auctioning 581 licenses or 734 licenses, as opposed to 176 licenses, should not add a significant amount of implementation complexity to the implementation of the auction. Any additional complexities that may result from increasing the number of auctioned licenses are less significant than the implementation risks associated with the use of PEAs, including the administrative burdens associated with individual petitions to modify the PEAs and potential litigation challenging the criteria used to establish the PEAs. Adopting a single-auction version of the Associations’ proposed licensing scheme is administratively simpler as the license areas are based on existing market definitions, with which all auction participants are familiar. Adopting 581 geographic license areas for the Incentive Auction will also meet the statutory requirements of Section 309(j) as it will provide rural carriers and small businesses a meaningful opportunity to participate in the acquisition of spectrum and provision of spectrum based services and will spur deployment of services to rural areas.

## **VII. CONCLUSION**

The Associations strongly encourage the Commission to adopt CMAs as the geographic licensing area for the 600 MHz spectrum. This is likely the last opportunity for small businesses and rural carriers to obtain significant amounts of low frequency spectrum which is vital for the provision of mobile broadband services to rural consumers. EAs and PEAs, as currently proposed, are too large to ensure that small businesses and rural carriers have a meaningful opportunity to obtain spectrum in the Incentive Auction. However, by adopting CMAs, the Commission will fulfill its statutory mandates to promote economic opportunity for small

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<sup>78</sup> *Id.*

businesses and rural telephone companies and promote the deployment of services to rural consumers.

Respectfully submitted,

**Rural Wireless Association, Inc.**

**NTCA - The Rural Broadband Association**

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