Competitive Carriers Association
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Competitive Carriers Association
805 15th Street NW, Suite 401
Washington, DC 20005
Office: (202) 449 -9866 • Fax: (866) 436 -1080

March 24, 2014

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: EX PARTE NOTICE
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

Dear Ms. Dortch:

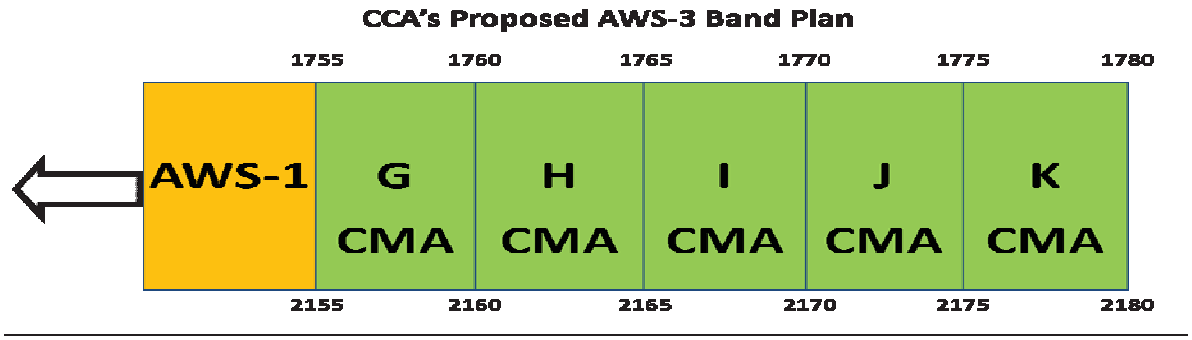
Competitive Carriers Association ("CCA") hereby submits notice of the following meetings with Federal Communications Commission ("FCC" or "Commission") staff related to the above-referenced proceeding.[1]

- On March 20, 2014, the following CCA representatives met with Louis Peraertz, Legal Advisor for Wireless, Public Safety, and International to Commissioner Clyburn: Steve Berry, Rebecca Murphy Thompson, Tim Donovan and Sean Spivey;
- On March 20, 2014, the following CCA representatives met with David Goldman, Senior Legal Advisor to Commissioner Rosenworcel: Steve Berry, Rebecca Murphy Thompson, Tim Donovan and Sean Spivey;
- On March 21, 2014, the following CCA representatives met with Renee Gregory, Legal Advisor for Engineering and Technology, Wireless and the Incentive Auction to Chairman Wheeler: Steve Berry, Tim Donovan and Sean Spivey, as well as Matthew Brill of Latham & Watkins, LLP (outside counsel to CCA);
- On March 21, 2014, the following CCA representatives met with Philip Verveer, Senior Counselor to Chairman Wheeler: Steve Berry, Tim Donovan and Sean Spivey, as well as Matthew Brill of Latham & Watkins, LLP (outside counsel to CCA); and
- On March 21, 2014, the following CCA representatives met with Brendan Carr, Legal Advisor for Wireless, Public Safety, and International to Commissioner Pai: Steve Berry, Tim

[1] *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, et al.*, Notice of Proposed Rulemaking and Order on Reconsideration, 28 FCC Rcd 11479 (2013) ("NPRM").

Donovan and Sean Spivey, as well as Matthew Brill of Latham & Watkins, LLP (outside counsel to CCA).

CCA discussed several issues surrounding the AWS-3 auction, including spectrum block sizes and geographic license sizes for the AWS-3 band, the use of package bidding, and an interoperability requirement for the AWS-3 band. As an initial matter, CCA expressed its skepticism toward the band plan for the 1755-1780 MHz and 2155-2180 MHz spectrum as currently proposed. CCA was surprised by reports that the Commission intends to offer this paired spectrum in two 10x10 MHz blocks auctioned based on Economic Areas ("EAs") and one 5x5 MHz block auctioned based on Cellular Market Areas ("CMAs"). As explained more fully below, the vast weight of the evidence in this proceeding supports auctioning the spectrum in smaller, 5x5 MHz building blocks, and based on smaller geographic license sizes, such as CMAs. CCA therefore urged the Commission to adopt a band plan for the paired 1755-1780 MHz and 2155-2180 MHz spectrum that utilizes five, 5x5 MHz building blocks and CMAs. Below is an illustration of CCA's proposed band plan:



This proposed band plan is the best way to maximize participation in the upcoming AWS-3 auction, which should have the dual effects of promoting competition in the wireless industry and enhancing auction revenues.

Block Sizes

The Commission wisely proposed in its NPRM to auction the AWS-3 band using 5x5 MHz building blocks.[2] In so doing, the Commission stated that "five-megahertz blocks would provide entry opportunities for small and rural service providers, and can be aggregated to provide greater capacity where needed."[3] This proposal has garnered near universal support in the record.[4] Indeed, in reiterating its enthusiastic support for this position, AT&T noted in its reply comments that "the Commission's

[2] NPRM at ¶ 47.

[3] *Id* (citations omitted).

[4] *See, e.g.*, Comments of AT&T, GN Docket No. 13-185, at 12 (filed Sept. 18, 2013); Comments of T-Mobile USA, Inc., GN Docket No. 13-185, at 28 (filed Sept. 18, 2013); Comments of Mobile Future, GN Docket No. 13-185, at 15 (filed Sept. 18, 2013); Reply Comments of U.S. Cellular Corp., GN Docket No. 13-185, at 21-23 (filed Oct. 28, 2013). In fact, only Verizon suggested that the AWS-3 band be licensed in a mix of 5x5 and 10x10 spectrum blocks. *See* Comments of Verizon Wireless, GN Docket No. 13-185, at 15-16 (filed Sept. 18, 2013).

proposal to assign the AWS-3 spectrum at 1755-1780 MHz and 2155-2180 MHz in paired 5x5 MHz blocks *enjoyed broad support*."[5]

During its meetings, CCA agreed with the Commission in its NPRM that auction participants can aggregate larger spectrum channels by bidding on multiple 5x5 blocks, but noted that smaller carriers may not be able to access spectrum if offered in 10x10 blocks—particularly if larger geographic license sizes are also used. Meanwhile, the efficiency difference between deploying service on two adjacent 5x5 MHz blocks versus one 10x10 MHz block is minimal.[6] CCA recounted historical evidence demonstrating that smaller block sizes raise more revenue at auction than larger block sizes. Specifically, in Auction 66 (AWS-1) the B Block license (a 10x10 MHz block) sold for $0.43 MHz/POP, while the C Block license (a 5x5 MHz block) went for $0.51 MHz/POP, approximately 15 percent more than the B Block.[7] To the extent the Commission is worried about meeting closing requirements for the auction due to high reserve prices for the spectrum, adopting smaller block sizes should ease those concerns. CCA strongly encouraged the Commission to utilize 5x5 MHz spectrum building blocks for the AWS-3 auction.

Geographic License Sizes

The Commission originally proposed in its NPRM to auction the AWS-3 band using EAs as the applicable geographic license size.[8] However, as CCA has argued, many smaller carriers will likely be unable to participate in both the incentive auction and the AWS-3 auction if EAs are used as the geographic licensing unit.[9] For example, Bluegrass Cellular currently holds 700 MHz spectrum licenses in seven CMAs (with population centers rarely above 50,000 people) that overlap the current Bluegrass

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[5] Reply Comments of AT&T, GN Docket No. 13-185, at 7 (filed Oct. 28, 2013) (emphasis added). AT&T has since reversed itself and supported the Commission's proposal to utilize a mix of 10x10 and 5x5 MHz spectrum blocks. *See Notice of Ex Parte* Letter from Stacey Black, Asst. Vice President, Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 (filed Mar. 19, 2014).

[6] T-Mobile AWS-3 Presentation at 3, *attached to Notice of Ex Parte* Letter from Russell H. Fox, Counsel for T-Mobile US, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 (filed Mar. 11, 2014).

[7] Size Matters, http://multimediacapsule.thomsonone.com/t-mobileusa/blog_size-matters (Mar. 19, 2014).

[8] NPRM at ¶¶ 3, 50-52.

[9] *See* Comments of CCA, GN Docket No. 13-185, at 7-9 (filed Sept. 18, 2013) ("CCA Comments"); *accord* Comments of Atlantic Seawinds Communications, LLC, GN Docket No. 13-185, at 1-2 (filed Sept. 18, 2013); Comments of Bluegrass Cellular, GN Docket No. 13-185, at 3-4 (filed Sept. 18, 2013); Comments of Public Service Wireless Services, Inc., GN Docket No. 13-185, at 1-2 (filed Sept. 18, 2013); Comments of RWA, GN Docket No. 13-185, at 3-6 (filed Sept. 18, 2013); Comments of U.S. Cellular Corp., GN Docket No. 13-185, at 27-36 (filed Sept. 18, 2013); Reply Comments of NTCA – The Rural Broadband Association, GN Docket No. 13-185, at 1-4 (filed Oct. 28, 2013); Reply Comments of NTCH, Inc., GN Docket No. 13-185, at 1-2 (filed Oct. 28, 2013); Reply Comments of RWA, GN Docket No. 13-185, at 2-6 (filed Oct. 28, 2013); Reply Comments of Blooston Rural Carriers, GN Docket No. 13-185, at 1-5 (filed Oct. 28, 2013); Reply Comments of Smith Bagley, Inc., *et al.*, GN Docket No. 13-185, at 2-3 (filed Oct. 28, 2013); Reply Comments of U.S. Cellular Corp., GN Docket No. 13-185, at 30-43 (filed Oct. 28, 2013); Comments of Atlantic Telephone Membership Corp., *et al.*, GN Docket No. 13-185, at 3-4 (filed Jan. 9, 2014).

service area.[10] If the Commission were to use EAs for AWS-3 licenses, Bluegrass would be forced to bid on four EAs which include areas such as Lexington, Louisville and Richmond, Kentucky, and Nashville, Tennessee, just to win spectrum to cover the counties within its current service footprint.[11] According to Bluegrass, these areas cover a population of approximately six million people, when its core markets cover approximately 1.2 million people.[12] Many other CCA members are similarly situated.[13]

Right-sized geographic spectrum sizes will not only increase auction revenues, but also broadband deployment. In many EAs, the largest carriers' incentives to bid for and valuation of spectrum are tied to the most densely populated areas. A competitive carrier may have strong incentives to bid for spectrum outside these population centers to deploy broadband services, while the large carriers' incentives remain unaltered regarding the urban centers absent rural areas within the same license. Auctioning spectrum using smaller geographic license sizes yields greater aggregate revenue by allowing all carriers to bid on spectrum where they desire it most without foreclosing participation by competitive carriers focused on serving rural areas.

To bolster the case, CCA pointed to an economic study it filed last year in the incentive auction docket detailing the economic and social benefits of utilizing smaller geographic licenses sizes for spectrum auctions.[14] Again, history counsels in favor of smaller geographic license sizes over larger areas. In Auction 73 (700 MHz), the B Block license (offered based on CMAs) sold for $2.68 MHz/POP, while the A Block license (offered based on EAs) went for $1.16 MHz/POP.[15] The C

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[10] Comments of Bluegrass Cellular, GN Docket No. 13-185, at 3 (filed Sept. 18, 2013).

[11] *Id.*

[12] *Id.*

[13] *See, e.g.*, *Notice of Ex Parte* Letter from Gregory W. Whiteaker, Counsel for Public Service Wireless Servs., Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 12-268, 13-185 at 2 (filed Sept. 18, 2013) ("Were the Commission to auction [spectrum] on the basis of EAs, PSW would have to attempt to bid on five (5) EAs covering significant portions of four (4) states in order to acquire [ ] spectrum in the regional area that PSW serves or desires to serve."); *Notice of Ex Parte* Letter from Slayton Stewart, CEO, Carolina West Wireless, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 12-268, 13-185 at 2 (filed Oct. 7, 2013) (noting that use of EAs in upcoming spectrum auctions would force CWW "to bid on ten EAs . . . just to win spectrum to cover the counties within its current service footprint . . . . All told, Carolina West would have to bid on spectrum covering over 18 million POPs, when its core markets cover a much smaller footprint [of] somewhere closer to 2.5 million POPs."); *Notice of Ex Parte* Letter from Jonathan Foxman, President & CEO, MTPCS, LLC d/b/a Cellular One to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 12-268, 13-185 at 2 (filed Oct. 17, 2013) (similarly noting that "were the Commission to license . . . AWS-3 spectrum on the basis of Economic Areas (EAs), Cellular One would be forced to bid on five EAs . . . covering two [*sic*] of the major metropolitan cities in Texas (Houston, Dallas /Fort Worth and Austin), [and] other metropolitan parts of Texas . . . [and] Louisiana . . . covering over 19 million pops, compared to the much smaller footprint of its core market areas [approximately one million people].").

[14] *See* Dr. William Lehr and Summit Ridge Group, *Right-Sizing Spectrum Auction Licenses: The Case for Smaller Geographic License Areas in the TV Broadcast Incentive Auction* (Dec. 2013) (attached to *Ex Parte* Letter from Steven K. Berry, President and CEO, CCA to The Hon. Tom Wheeler, Chairman, FCC, GN Docket No. 12-268 (filed Nov. 20, 2013)).

[15] *Id* at 25.

Block license (offered based on larger Regional Economic Area Groupings, or REAGs) went for even less—$0.76 MHz/POP.[16]

Finally, CCA briefly addressed Federal incumbents' abilities to coordinate with competitive carriers on relocation/utilization issues should spectrum be auctioned based on smaller geographic license sizes. CCA noted that competitive carriers have significant experience working with the Federal government on spectrum issues, and often times are able to deliver faster response times and resolutions than larger carriers, who may be less familiar with the local topography and other factors related to coordination/interference mitigation. Moreover, CCA agrees with other commenters in this proceeding that these concerns are most likely overstated.[17]

Package Bidding

Similarly, the majority of commenters who have addressed the issue of package bidding for the AWS-3 auction have been opposed to it.[18] CCA commended the Commission—based on its understanding of the draft—for not adopting any form of package bidding for this auction, and reiterated its strong opposition to its use. CCA noted that package bidding would add increasing complexity to the auction and fundamentally disadvantage small, midsize, and rural carriers.[19] Furthermore, CCA asked that the Commission not change its position on package bidding should it reevaluate the band plan as currently proposed. Adopting smaller geographic license sizes or utilizing smaller blocks, but in concert with package bidding, would undo the benefits those revisions would seek to achieve.

Interoperability

Finally, CCA urged the Commission to adopt an interoperability requirement for the AWS-3 band. At a minimum, this should include interoperability across all paired blocks in the 1755-1780 MHz and 2155-2180 MHz spectrum (assuming the Commission ultimately pairs these frequencies). Depending on the band plan ultimately adopted for the AWS-3 spectrum, the band could fall victim to the same interoperability issues that until recently plagued the Lower 700 MHz band. Imposing a clear, *ex ante* interoperability requirement ahead of the AWS-3 auction is the only way to ensure development

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[16] *Id.*

[17] *See, e.g.*, Reply Comments of Motorola Mobility LLC, GN Docket No. 13-185, *et al.* at 5, 4 (filed Oct. 28, 2013) (noting that "the analysis prepared by [CSMAC] . . . was overly conservative and did not represent the real-world interference environment between Federal and commercial users," that "sharing between commercial and Federal Government users will not be ubiquitous but will be limited to certain geographical areas surrounding protected facilities" and that "in the unlikely case that Government users experience interference, post-deployment remediation can be accomplished by configuring the LTE base station equipment to restrict handset operating power in the disputed areas.").

[18] *See, e.g.*, Comments of RWA, GN Docket No. 13-185, at 5 (filed Sept. 18, 2013); Comments of U.S. Cellular Corp., GN Docket No. 13-185, at 36-49 (filed Sept. 18, 2013); Reply Comments of Smith Bagley, Inc. et al., GN Docket No. 13-185, at 4 (filed Oct. 28, 2013); Reply Comments of U.S. Cellular Corp., GN Docket No. 13-185, at 43-47 (filed Oct. 28, 2013); *but see* Comments of TIA, GN Docket No. 13-185, at 14 (filed Sept. 18, 2013); Comments of Verizon Wireless, GN Docket No. 13-185, at 16-17 (filed Sept. 18, 2013).

[19] *See* Supplemental Reply Comments of CCA, GN Docket Nos. 12-268, 13-185 at 10-11 (filed Jan. 23, 2014).

of a robust ecosystem of devices capable of operating across the entirety of the band. Creation of a "boutique" band class would hinder the global market for handsets and delay buildout for this spectrum.

For similar reasons, CCA urged the Commission to continue to promote interoperability by facilitating it across the 1710-1780 MHz and 2110-2180 MHz bands,[20] and expressed interest in expanded interoperability in the 2180-2200 MHz downlink portion of the AWS-4 band[21] to the extent technically and legally feasible. Should the Commission decide it does not have sufficient time to fully consider DISH's request prior to adopting a Report and Order, CCA echoed Public Knowledge's request that the Commission not take any actions inconsistent with later adopting such a requirement, and explore the feasibility of seeking further comment on DISH's proposal.[22] CCA believes the Commission would have an adequate amount of time to seek public comment on DISH's proposal prior to the start of the auction.

This notice is being filed pursuant to Section 1.1206(b) of the Commission's rules. Should you have any questions, please contact the undersigned.

Sincerely,

/s/ Rebecca Murphy Thompson

Rebecca Murphy Thompson
C. Sean Spivey

cc: Louis Peraertz
David Goldman
Renee Gregory
Philip Verveer
Brendan Carr

[20] *See* Reply Comments of U.S. Cellular Corp., GN Docket No. 13-185, at 27-30 (filed Oct. 28, 2013).

[21] *Notice of Ex Parte* Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH Network to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 (filed Mar. 14, 2014).

[22] *Notice of Ex Parte* Letter from John Bergmayer, Senior Staff Attorney, Public Knowledge to Marlene H. Dortch, Secretary, FCC, GN Docket No. 13-185 at 4 (filed Mar. 18, 2014).