

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

In the Matter of)	
)	
Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002)	AU Docket No. 14-252
)	
Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions)	GN Docket No. 12-268
)	

To: The Commission

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

The Rural Wireless Association, Inc. (“RWA”)¹ and NTCA – the Rural Broadband Association (“NTCA”)² (together “the Associations”) file these joint comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) *Incentive Auction Comment Public Notice*³ seeking comment on specific procedures to be used for the 600 MHz Broadcast Incentive Auction (Auction 1000, including Auctions 1001 and 1002). The Associations appreciate the

¹ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies. Each of RWA’s member companies serves fewer than 100,000 subscribers.

² NTCA represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service local exchange carriers and broadband providers, and many provide wireless, video, satellite, and/or long distance services as well.

³ *In the Matter of Comment Sought on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002; Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Public Notice – Comment South on Competitive Bidding Procedures for Broadcast Incentive Auction 1000, Including Auctions 1001 and 1002, AU Docket No. 14-252, GN Docket No. 12-268, FCC 14-191 (rel. Dec. 17, 2014) (“*Incentive Auction Comment Public Notice*”).

Commission’s efforts to craft an Incentive Auction structure that will encourage forward auction participation by a wide variety of bidders – not just the largest few with the deepest pockets. The Commission’s proposed spectrum reserve structure, along with its decisions to use Partial Economic Areas (“PEAs”) rather than the too-large Economic Areas (“EAs”) and avoid package bidding, reflects the Commission’s dedication to meeting its mandate under Section 309(j) of the Communications Act of 1934, as amended (the “Act”) to promote “economic opportunity and competition...by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses [and] rural telephone companies....”⁴ The Associations appreciate the Commission’s tremendous efforts thus far, and urge that that this work be continued without delay so that the Incentive Auction can begin as scheduled in early 2016.

I. THE COMMISSION’S PROPOSALS WILL HELP TO ENCOURAGE AUCTION PARTICIPATION BY SMALL, RURAL WIRELESS CARRIERS.

As has been made clear in the record, low-band spectrum is tremendously important in providing robust broadband coverage in rural areas. As noted in *Digital Crossroads: Telecommunications Law and Policy in the Internet Age*, “[l]ow-band spectrum presents the most significant advantages in sparsely populated rural areas, where its superior propagation characteristics enable providers to build fewer cell towers that cover larger cells.”⁵ The Commission has recognized “the importance of access to low-band spectrum to promote variety in licensees and the advancement of rural deployment as directed by Section 309(j).”⁶ The technical superiority of low band spectrum does not, unfortunately, equate to greater use of such spectrum in rural areas. The decisions that the

⁴ See 47 U.S.C. § 309(j)(B).

⁵ Nuechterlein, Jonathan E., Veiser, Philip J., “Digital Crossroads: Telecommunications Law and Policy in the Internet Age,” 2nd. Ed., MIT Press Books (2013) at p. 136.

⁶ *In the Matter of Policies Regarding Mobile Spectrum Holdings, Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, WT Docket No. 12-269, GN Docket No. 12-268 (rel. June 2, 2014).

Commission has made (and will continue to make) in this proceeding will have a lasting effect on competition in the mobile wireless market, and access to mobile broadband in rural areas.

a. Spectrum Reserve

There has been significant activity in the docket regarding the structures of the Final Stage Rule and the Spectrum Reserve and the interplay between the two. The Associations support Commission proposals to maximize the amount of unimpaired reserve spectrum set aside for eligible bidders. First, the Associations support the Commission's proposal to designate only Category 1 (largely unimpaired) spectrum blocks for bidding by reserve-eligible entities.⁷ As the Commission notes, reserve-eligible entities will be far more reliant on 600 MHz Band spectrum to expand coverage and to compete in the modern mobile wireless marketplace than nationwide carriers that already hold significant amounts of low-band spectrum in the cellular, 700 MHz and 800 MHz bands. This proposal is consistent with the Commission's responsibility to promote spectrum access for a variety of licensees, including carriers seeking to serve rural areas or improve services in rural areas.⁸

The Commission also seeks comment on a proposal in which Category 2 spectrum blocks may be included in the reserve in any PEAs with fewer Category 1 blocks than in the maximum spectrum reserve, assuming sufficient demand for Category 2 blocks by reserve-eligible bidders at the time the auction reaches the Final Stage Rule trigger.⁹ Where PEAs have fewer Category 1 blocks available than would be contained in the maximum spectrum reserve, the Associations support the inclusion of Category 2 blocks in the reserve. In situations where the amount of Category 1 spectrum available cannot meet the maximum spectrum reserve amount, this solution makes good sense. While largely unimpaired spectrum is certainly preferred – the simple fact is that *more* reserve spectrum is

⁷ *Incentive Auction Comment Public Notice* ¶ 151.

⁸ 47 U.S.C. §§ 309(j)(3)(A); (B).

⁹ *Incentive Auction Comment Public Notice* ¶ 152.

better than *less* reserve spectrum for the Associations' members and rural consumers generally.

The Associations also support the Commission's proposal to base the maximum number of reserved licenses on the total number of both Category 1 and Category 2 blocks offered in a PEA.¹⁰ This proposal ensures the integrity (and benefits) of the spectrum reserve in situations where fewer Category 1 blocks are offered in certain PEAs to accommodate market variation. The Commission's example in the *Incentive Auction NPRM* is a useful illustration of this proposal's utility. If there are 60 MHz of Category 1 blocks and 10 MHz of Category 2 blocks available in a particular PEA, then a total of 70 MHz means that, under the FCC's proposal, a maximum of 30 MHz of spectrum will be reserved.¹¹ If the Commission were only to consider the amount of Category 1 spectrum made available in a particular PEA, then the 60 MHz of Category 1 spectrum would mean that only a maximum of 20 MHz of spectrum would be reserved.¹² The difference is significant – and would be more so in PEAs with greater market variation. The Associations agree that the Commission must protect the benefits to competition and consumers that offering reserve spectrum provides, and concurs with its proposal.

b. The Decision to Use PEAs Instead of EAs and to Prohibit Package Bidding Will Encourage Incentive Auction Participation.

The Associations support the Commission's decision to use PEAs instead of the too-large EAs, and believe this action will increase participation and competition in the Incentive Auction. The Associations worked closely with a coalition of rural wireless stakeholders and Commission staff to forge a compromise proposal that would allow the Commission to meet the specific needs of this extremely complicated Incentive Auction and prevent small and rural wireless carriers from being foreclosed from bidding on EAs.¹³ While the Associations continue to believe that CMAs represent the

¹⁰ *Incentive Auction Comment Public Notice* ¶ 150.

¹¹ *Id.*

¹² *Id.* at ¶ 23.

¹³ *See Ex Parte* Letter from C. Sean Spivey, Assistant General Counsel, Competitive

most efficient and pro-competitive license size for spectrum auctions, the Commission’s use of PEAs in the Incentive Auction balances competing interests, namely: (1) preserving participation opportunities for small and rural wireless carriers; and (2) reducing the total number of license territories to minimize complexity in an already very complex, first-of-its-kind Incentive Auction. As such, the Associations believe that the use of PEAs in the Incentive Auction is far preferable to an approach based on EAs alone. The Associations appreciate the Commission’s willingness to work with stakeholders to find a workable solution to the geographic license area issue.

The Associations are similarly pleased with the Commission’s decision to prohibit package bidding in the Incentive Auction, and agree with the Commission’s tentative conclusion that a “major market” bid aggregation approach would: (1) not be consistent with the Commission’s goal of encouraging entry by providers that contemplate offering wireless broadband service on a localized basis; and (2) discourage bidders, particularly small or regional entities with an interest in only a subset of “major markets,” from participating in the forward auction.¹⁴ The record in this proceeding demonstrates the pervasive harms that would have flowed from the Commission’s adoption of any sort of package bidding component in the Incentive Auction. There was near unanimity against package bidding, with only the two largest carriers supporting its use. But large carriers rarely, if ever, have difficulty out-bidding small businesses and rural carriers for licenses that they truly want, and package bidding would have made it extremely difficult for the Associations’ members to have had a meaningful

Carriers Association; Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association; Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc.; and John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Mar. 11, 2014); *see also Ex Parte* Letter from C. Sean Spivey, Assistant General Counsel, Competitive Carriers Association; Jill Canfield, Director, Legal and Industry & Assistant General Counsel, NTCA – The Rural Broadband Association; Caressa D. Bennet, General Counsel, Rural Wireless Association, Inc.; and John A. Prendergast, Managing Partner, Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-268 (filed Mar. 20, 2014).

¹⁴ *Incentive Auction Comment Public Notice* ¶ 184.

opportunity to participate in the Incentive Auction. The decision against package bidding will increase participation and competition in the Incentive Auction, and improve wireless service to consumers as a result.

II. THE INCENTIVE AUCTION SHOULD BE HELD AS PLANNED IN EARLY 2016

The Associations urge the Commission to hold the Incentive Auction in early 2016, as planned. Small and rural providers require additional low band spectrum to provide the high quality wireless broadband services rural consumers demand. Any additional delay in the Incentive Auction may benefit the largest wireless providers who acquired a large amount of spectrum in the recent AWS-3 spectrum auction, but it would be to the detriment of rural consumers.

The 600 MHz spectrum to be auctioned is very well suited to rural applications. Its propagation characteristics mean that fewer towers are necessary to serve vast swaths of land. If it can be acquired at an affordable price, this spectrum has the potential to ensure that consumers in the most rural areas can have access to the most up-to-date fixed and mobile wireless broadband applications. Small and rural wireless providers represented by the Associations are preparing for an early 2016 auction and any delay will substantially and negatively impact business plans and opportunities.

The AWS-3 auction results demonstrate that there is pent up demand for spectrum and wireless based broadband services. Thirty-one bidders won 1,611 licenses for unprecedented combined gross bids of \$44.9 billion. The auction exceeded all expectations, demonstrating that wireless providers anticipate explosive growth in consumer wireless broadband applications.

With its \$18.2 billion in new wireless spectrum acquired in the AWS-3 auction, AT&T is now in general parity with Verizon in terms of licensed spectrum in the top 20 markets. AT&T bought a nearly contiguous 10x10 MHz block of spectrum, covering approximately 96 of the top 100 markets. Verizon was the number two bidder in the auction, adding \$10.4 billion to the gross total. While these two major players concentrate their acquisitions and build out in the most populated and profitable areas

ahead of their potential competitors, rural consumers and the providers who want to serve them continue to wait for additional opportunities to provide competitive spectrum-based services. A delay in the Incentive Auction would be detrimental to every provider who lacks the seemingly unending resources of the two largest providers. There is an immediate consumer hunger for additional spectrum-based broadband services in every corner of the country and there are providers ready, willing and able to feed that hunger. The Commission must hold fast to established timetables so that competitive opportunities remain viable and consumer expectations, especially outside of the largest metropolitan areas, can be met.

III. CONCLUSION

The proposed Incentive Auction processes and procedures are the result of a tremendous effort on the part of the Commission, working cooperatively with industry. The proposed spectrum reserve structure, combined with PEA geographical licensing and the decision to not use package bidding will encourage forward auction participation by a wide variety of bidders, including those that intend to serve rural areas. The Associations encourage the Commission to hold the auction as scheduled in early 2016 to put this spectrum in the hands of wireless providers who are ready and able to put it to its best use and provide competitive service in rural areas of the country.

Respectfully submitted,

Rural Wireless Association, Inc.

By: */s/ Daryl A. Zakov*

Daryl A. Zakov, Assistant General Counsel
Erin P. Fitzgerald, Asst. Regulatory Counsel
P.O. Box 50551
Arlington, VA 22205-5551
(202) 371-1500

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NTCA – The Rural Broadband Association

By: */s/ Jill Canfield*

Jill Canfield
Director, Legal and Industry &
Assistant General Counsel
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203
(703) 351-2000