



Federal Communications Commission
Washington, D.C. 20554

January 18, 2017

DA 17-63

Robert Vitanza
AT&T Services, Inc.
208 S. Akard St
Rm 2914
Dallas, TX 75002

RE: Request for Waiver of Section 27.14(g), WT Docket No. 16-335

Dear Mr. Vitanza:

The Mobility Division of the Wireless Telecommunications Bureau (Bureau) hereby grants the request of AT&T Mobility Spectrum LLC (AT&T) for a limited waiver of Section 27.14(g) of the Commission's rules.¹ The waiver will allow AT&T to meet population- rather than geographic-based construction benchmarks for a Lower 700 MHz B Block license, Call Sign WQIZ358 (Cellular Market Area (CMA) 315 Alaska 1-Wade Hampton) (the License or CMA315). We find that grant of the waiver, subject to the performance and related conditions we adopt below, will serve the public interest by fostering AT&T's provision of new and advanced wireless services to citizens in the interior and northern reaches of Alaska.²

Background. In the *700 MHz Second Report and Order*, the Commission adopted interim and end-of-license term construction benchmarks for certain 700 MHz band licensees.³ The Commission required Lower 700 MHz band A and B Block licensees to provide signal coverage and offer service over at least 35 percent of their license area by June 13, 2013,⁴ later extended to December 13, 2016⁵ (Interim Construction Requirement), and to provide signal coverage and offer service over at least 70 percent of that area by the end of their initial 10-year license term, here June 13, 2019 (Final Construction Requirement).⁶ Section 27.14(g)(1) provides that if a licensee does not satisfy the Interim Construction Requirement, its license term will be reduced by two years, thereby requiring it to meet the Final

¹ 47 CFR § 27.14(g). Request for Waiver of Lower 700 MHz Band Interim and End-of-Term Geographic Construction Benchmarks for Alaska B Block License WQIZ358, ULS File No. 0007499041 (filed Oct. 11, 2016) (Waiver Request). See also *Ex Parte* Letter from Celia Nogales, AVP-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Dec. 2, 2016) (AT&T Dec. 2 *Ex Parte*); *Ex Parte* Letter from Celia Nogales, AVP-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Dec. 22, 2016) (AT&T Dec. 22 *Ex Parte*).

² See AT&T Waiver Request at 3.

³ See *Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

⁴ See 47 CFR § 27.14(g).

⁵ See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122, 15151-52, para. 65 (2013) (*Interoperability Order*).

⁶ See 47 CFR § 27.14(g); *700 MHz Second Report and Order*, 22 FCC Rcd at 15293-94, 15349, paras. 6, 157.

Construction Requirement two years sooner.⁷ Further, if a licensee does not meet its Final Construction Requirement, it will be subject to a “keep-what-you-serve” rule, whereby its “authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission.”⁸

AT&T filed the Waiver Request on October 11, 2016, proposing to satisfy the Interim and Final Construction Requirements by covering 40 percent of CMA315’s population by December 13, 2016, and 70 percent of its population by June 13, 2019.⁹ The Waiver Request went on public notice for comment on October 14, 2016.¹⁰ One party, General Communication, Inc. (GCI), filed comments and supports the Waiver Request.¹¹ GCI states that rigid application of geographic construction requirements to the License would be counterproductive, because portions of the License area that remain unserved by AT&T as of June 13, 2017, would be returned to the Commission under Section 27.14(g)(2) and likely continue to be underserved.¹²

On December 2 and December 22, 2016, AT&T supplemented its Waiver Request, and proposed to satisfy the following more stringent, population-based construction benchmarks:

- By December 13, 2016, provide coverage and offer service to at least 70 percent of CMA315’s population. Failure to meet this benchmark would result in a two-year reduction of the license term, accelerating the Final Construction Requirement to June 13, 2017.¹³
- By June 13, 2019, provide coverage and offer service to at least 75 percent of CMA315’s population.¹⁴ Failure to meet this benchmark would result in the automatic termination of any portions of CMA315 where AT&T was not providing service by June 13, 2017.¹⁵
- By June 13, 2020, provide coverage and offer service to at least 80 percent of CMA315’s population.¹⁶ Failure to meet this benchmark would result in the automatic termination of any portions of CMA315 where AT&T was not providing service by June 13, 2017.¹⁷

⁷ 47 CFR § 27.14(g)(1).

⁸ 47 CFR § 27.14(g)(2). *See also* 700 MHz *Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

⁹ *See* AT&T Waiver Request at 3.

¹⁰ *See Wireless Telecommunications Bureau Seeks Comment on AT&T Request for Waiver of Geographic Coverage Requirement for 700 MHz License in Alaska*, WT Docket No. 16-335, Public Notice, 31 FCC Rcd 11640 (WTB 2016).

¹¹ *See* General Communication, Inc. Reply Comments (GCI Reply); *Ex Parte* Letter from Paul Margie, Counsel to GCI, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Dec. 7, 2016) (GCI *Ex Parte*). GCI attached a similar waiver request for its Lower 700 MHz A Block license WQJU656 (Basic Economic Area 171—Anchorage, AK). GCI’s waiver request is beyond the scope of this proceeding, and we will address it in WT Docket No. 16-402. *See Wireless Telecommunications Bureau Seeks Comment on Alaska Wireless Network Request for Waiver of Geographic Coverage Requirement for 700 MHz License in Alaska*, WT Docket No. 16-402, Public Notice, DA 16-1376 (WTB 2016).

¹² *See* GCI Reply at 2.

¹³ AT&T Dec. 2 *Ex Parte* at 1; AT&T Dec. 22 *Ex Parte* at 1.

¹⁴ AT&T Dec. 22 *Ex Parte* at 1.

¹⁵ AT&T Dec. 22 *Ex Parte* at 2. *See also* AT&T Dec. 2 *Ex Parte* at 2.

¹⁶ AT&T Dec. 22 *Ex Parte* at 1.

AT&T also committed to maintaining coverage and service to at least 80 percent of CMA315's population for five years from the proposed June 13, 2020, benchmark (*i.e.*, through June 13, 2025).¹⁸ AT&T proposed that if it fails to maintain coverage during the five-year period for a reason that is not beyond its control, its authorization would automatically terminate for those geographic portions of CMA315 where AT&T was not providing service by June 13, 2017.¹⁹ AT&T further stated that during any renewal term, it would negotiate in good faith with any third party seeking to lease spectrum in an area not served by AT&T.²⁰

On January 3, 2017, the Rural Wireless Association, Inc. (RWA) filed an identical pleading in WT Docket Nos. 16-335 and 16-402.²¹ While its arguments specifically address elements of the GCI waiver request, RWA states that “the same justifications exist for denying the AT&T Waiver as exist for denying the GCI [w]aiver. Because both GCI and AT&T are similarly situated each of the waivers of the end-of-term geographic construction benchmarks should be denied and for the reasons discussed in RWA’s instant Comments.”²² In response to the RWA Comments,²³ AT&T argues that we should not consider RWA’s comments because they were not filed within the comment cycle established by the Commission, and because they fail to address the specifics of AT&T’s Waiver Request.²⁴ AT&T further states that its commitment to provide at least 80 percent population-based coverage over the license area will promote rural deployment, and that RWA has not shown another entity is prepared to serve these areas in the near term.²⁵

Discussion. The Commission may grant a request for a waiver when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²⁶

We have carefully reviewed the record before us and find that the underlying purpose of Section 27.14(g) —“to better promote access to spectrum and the provision of service, especially in rural areas”²⁷— would be frustrated by application of the rule here and that grant of the requested waiver, subject to the performance and related conditions we adopt below, will serve the public interest. We also find that in view of the unique factual challenges of serving Alaska as detailed below, application of Section 27.14(g) here would be contrary to the public interest.

¹⁷ AT&T Dec. 22 *Ex Parte* at 2. *See also* AT&T Dec. 2 *Ex Parte* at 2.

¹⁸ AT&T Dec. 22 *Ex Parte* at 2.

¹⁹ AT&T Dec. 22 *Ex Parte* at 2. *See also* AT&T Dec. 2 *Ex Parte* at 2.

²⁰ *See* AT&T Dec. 2 *Ex Parte* at 2.

²¹ Rural Wireless Association Comments, WT Docket Nos. 16-402 and 16-335 (Jan. 3, 2017) (RWA Comments).

²² *Id.* at 2, n.4.

²³ *Ex Parte* Letter from Celia Nogales, AVP-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Jan. 13, 2017) (AT&T Jan. 13 *Ex Parte*).

²⁴ *See id.* at 1.

²⁵ *Id.* at 2.

²⁶ 47 CFR § 1.925(b)(3).

²⁷ 700 MHz *Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

Although RWA failed to file its pleading by the November 3, 2016, deadline for reply comments in WT Docket 16-335, we will treat RWA's comments (to the extent they may be relevant to AT&T's Waiver Request) as an informal request for Commission action under Section 1.41 of the Commission's rules in the interest of having a more complete record.²⁸ RWA argues that granting a waiver of Section 27.14(g)'s geographic-based construction requirements would undermine the rule's purpose, and would not serve the public interest, as required by Section 1.925.²⁹ RWA further argues that harsh conditions and extremely low population densities in Alaska do not warrant waiver relief under Section 1.925.³⁰ RWA also claims that if spectrum is returned to the Commission under Section 27.14(g)(2), unspecified RWA members would apply for portions of the returned spectrum and satisfy applicable buildout requirements.³¹ As explained below, we nevertheless find that the public interest would be served by granting AT&T waiver relief under Section 1.925.

We agree with AT&T that the many unique circumstances attendant to serving CMA315, including its vast size, lack of backhaul and other infrastructure, its sparse population distribution,³² and difficult geographic and weather conditions (temperatures often fall below zero for long periods during the winter months in much of the license area), make it impracticable to meet the applicable geographic construction requirements.³³ Alaska is the largest state by area, yet has the lowest population density of any state.³⁴ CMA315 covers more than 376,863 square miles, an area 28 percent larger than Texas, with less than one percent of its population.³⁵ More than 44 percent of CMA315 (164,736 square miles) is within the Arctic Circle,³⁶ where the average winter temperature is -34° C (-30° F).³⁷ Much of this area is inhabited by wild animals and can only be reached by aircraft or snowmobile in good weather.³⁸

The Commission defines a "rural" county as one with a population density of 100 persons per square mile or less.³⁹ Six of the seven boroughs (the equivalent of counties) comprising CMA315 have a

²⁸ 47 CFR § 1.41.

²⁹ See RWA Comments at 4.

³⁰ *Id.* at 6.

³¹ See *id.*

³² Waiver Request at 5. See also Guide to State and Local Census Geography - Selected Data from the 2010 Census, U.S. Census Bureau, https://www.census.gov/geo/reference/guidestloc/select_data.html (2010 State and Local Census Guide); U.S. Census Bureau, 2010 Census of Population and Housing, Population and Housing Unity Counts, Alaska: 2010 (June 2012), at 7, <https://www.census.gov/prod/cen2010/cph-2-3.pdf>.

³³ See Waiver Request at 6, 7; AT&T Dec. 2 *Ex Parte* at 2.

³⁴ See Waiver Request at 5; FCC's Geographic Information Systems Database, <https://www.fcc.gov/general/geographic-information-systems> (FCC GIS Database); 2010 State and Local Census Guide.

³⁵ See FCC GIS Database. Texas comprises more than 268,585 square miles. See *id.*

³⁶ See *id.* Alaska comprises more than 663,209 square miles; CMA315 comprises more than 56 percent of Alaska. See *id.*

³⁷ See University of California Museum of Paleontology, The Tundra Biome, <http://www.ucmp.berkeley.edu/exhibits/biomes/tundra.php#arctic>.

³⁸ See National Geographic, Tundra, <http://environment.nationalgeographic.com/environment/habitats/tundra-profile/>; Alaska Road Map, <http://www.alaska-map.org/road-map.htm>.

³⁹ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 19078, 19086-88, paras. 10-12 (WTB 2004).

population density of less than half a person per square mile; the other has a density of 13 persons per square mile. Alaska ranks last in the United States for access to broadband service with a speed greater than 25 Mbps.⁴⁰

We concur with AT&T that without the requested waiver relief, it would lose authorization to serve most of the License area at the June 13, 2017, accelerated end-of-license term construction deadline, which could impede its ability to expand to other areas of CMA315 in need of service.⁴¹ With the requested waiver relief, however, AT&T would have the needed flexibility to “continue expanding service to small villages and communities and other less densely populated rural areas and to areas on the fringe of existing populations.”⁴² We agree with AT&T that the requested waiver also would enable it to expand service to new communities in CMA315 as they form over time.⁴³

AT&T has committed to serving 70 percent of CMA315’s population by the December 13, 2016, interim construction deadline; 75 percent of the area’s population by the June 13, 2019, end-of-license term construction deadline; and 80 percent of the area’s population by June 13, 2020.⁴⁴ AT&T’s commitment to extend service to at least 75 percent of CMA315’s population by June 13, 2019, and to at least 80 percent of CMA315’s population by June 13, 2020, would bring new advanced wireless services to Alaskans living in remote areas of CMA315 that they may not receive absent the requested waiver. We note that by covering 80 percent of CMA315’s population, AT&T would be serving a benchmark 10 percentage points higher than the 70 percent population benchmark for the Lower 700 MHz E Block,⁴⁵ and would meet a higher population-based benchmark than required in any other commercial service.⁴⁶

Consistent with Section 309⁴⁷ of the Act’s directive to promote the deployment of wireless services to rural communities,⁴⁸ and in light of the unique challenges of deploying service in Alaska, we

⁴⁰ See Nat’l Telecommunications & Info. Admin., U.S. Dep’t of Commerce, U.S. Broadband Availability: June 2010 – June 2012, at 12, tbl. 5 (May 2013), http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf

⁴¹ See Waiver Request at 2; AT&T Dec. 2 *Ex Parte* at 2. AT&T further states that, were spectrum from the License area to be reclaimed, “[o]ther providers would not likely claim the unserved areas and provide service in these remotest and sparsely populated areas and, even if claimed, those new licensees would experience the same challenges as AT&T and not likely meet their geographic coverage benchmarks.” *Id.*

⁴² AT&T Dec. 2 *Ex Parte* at 2.

⁴³ See Waiver Request at 2, 6, 9; AT&T Dec. 2 *Ex Parte* at 2.

⁴⁴ See AT&T Dec. 2 *Ex Parte* at 1-2; AT&T Dec. 22 *Ex Parte* at 1.

⁴⁵ See AT&T Dec. 2 *Ex Parte* at 2; Waiver Request at 8; *Interoperability Order*, 28 FCC Rcd at 15148, para. 57 (all active Lower 700 MHz band E Block licensees may meet their interim construction benchmark by providing signal coverage and offering service to at least 40 percent of its total E Block population and may meet their end-of-term construction benchmark by providing signal coverage to at least 70 percent of the population in each of its license areas). See also 47 CFR § 27.14(h) (Upper 700 MHz C Block licensees are required to provide reliable service sufficient to cover 40 percent of the population of their license areas within four years and 75 percent of the population within ten years.).

⁴⁶ See AT&T Dec. 2 *Ex Parte* at 2. See also, e.g., 47 CFR §§ 24.203 (PCS), 27.14(s) (AWS-1).

⁴⁷ 47 U.S.C. § 309.

⁴⁸ Section 309(j) directs the Commission to, among other things, ensure “the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.” 47 U.S.C. § 309(j)(3).

find that a limited waiver of Section 27.14(g)—subject to the conditions described below—will serve the public interest by fostering the provision of new wireless services to areas of Alaska that may otherwise continue to be underserved. We believe that, absent a waiver, the provision of wireless services to Alaskans in CMA315, especially those residing in particularly remote areas, could be delayed, frustrating the underlying purpose of Section 27.14(g)—to promote access to spectrum and the provision of service, especially in rural areas. We are adopting stringent performance benchmarks and certain conditions below to ensure that, consistent with Section 309 of the Act and the underlying purpose of Section 27.14(g), AT&T brings new services to remote communities in CMA315. We further believe that AT&T’s commitment to negotiate in good faith with any third party seeking to lease spectrum in an area not served by AT&T, which we have included as a condition, will ensure access to unused portions of the License area by other providers, including any RWA members.

Accordingly, we hereby grant AT&T’s request for a waiver of Section 27.14(g) as conditioned below.⁴⁹

Coverage Benchmarks and Waiver Conditions. To ensure that the benefits of the waiver relief are realized by citizens in isolated areas of CMA315, we require AT&T to satisfy certain coverage benchmarks and other conditions. If AT&T fails to meet any benchmark or satisfy any condition, it will (unless specified otherwise) be subject to the Section 27.14(g)(2) “keep-what-you-serve” rule that would have applied as of June 13, 2017 (the accelerated end-of-license term absent a waiver of Section 27.14(g)).⁵⁰

1. *70 Percent Population Coverage Benchmark.* The waiver relief described in this Order is effective only if AT&T provided signal coverage and offered service to at least 70 percent of CMA315’s population by December 13, 2016.⁵¹ If AT&T failed to meet this initial benchmark, its license term will be reduced by two years, to June 13, 2017, and its authorization will automatically terminate, without Commission action, for those geographic portions of the License area in which AT&T is not providing service by June 13, 2017, and those unserved areas will become available for reassignment by the Commission.
2. *75 Percent Population Coverage Benchmark.* By June 13, 2019, AT&T must provide signal coverage and offer service to at least 75 percent of CMA315’s population.⁵² If AT&T fails to meet this benchmark, its authorization will automatically terminate, without Commission action, for those geographic portions of the License area in which AT&T was not providing service by June 13, 2017, and those unserved areas will become available for reassignment by the Commission.
3. *80 Percent Population Coverage Benchmark.* By June 13, 2020, AT&T must provide signal coverage and offer service to at least 80 percent of CMA315’s population.⁵³ If AT&T fails to meet this benchmark, its authorization will automatically terminate, without Commission

⁴⁹ This waiver relief will not automatically transfer if AT&T seeks to assign, partition, or disaggregate spectrum under the License to a third party. Rather, the third party must demonstrate that the waiver relief should transfer, and the Bureau may, in its discretion, grant, modify, or reject such relief.

⁵⁰ See *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, 15349, para. 153; 47 CFR § 27.14(g)(2).

⁵¹ AT&T must file a notification of construction demonstrating that it has met this benchmark. See 47 CFR 1.947(d).

⁵² *Id.*

⁵³ *Id.*

action, for those geographic portions of the License area in which AT&T was not providing service by June 13, 2017, and those unserved areas will become available for reassignment by the Commission.

4. *Continuity of Coverage.* AT&T must maintain coverage and service to at least 80 percent of CMA315's population for a minimum of five years, commencing June 13, 2020 (that is, until at least June 13, 2025). However, AT&T may reduce coverage and service to less than 80 percent of CMA315's population for up to 180 days to accommodate circumstances such as a substantial technology upgrade or recovery from a natural or manmade catastrophe. If AT&T violates this condition, it must provide written notice to the Commission, and its authorization will automatically terminate, without Commission action, for those geographic portions of the License area in which AT&T was not providing service by June 13, 2017, and those areas will become available for reassignment by the Commission.
5. *Good Faith Negotiations.* During the remainder of the current license term and any subsequent license terms, AT&T must negotiate in good faith with any third party seeking to acquire or lease spectrum in a geographic area of CMA315 not served by AT&T.⁵⁴ If the Bureau finds that AT&T failed to negotiate in good faith, its authorization will automatically terminate, without Commission action, for that relevant geographic area of the License subject to the negotiation, and that unserved area will become available for reassignment by the Commission.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's rules, 47 CFR § 1.925(b)(3), the request for waiver of Section 27.14(g) of the Commission's rules, 47 CFR § 27.14(g), filed October 11, 2016, by AT&T Mobility Spectrum LLC, ULS File No. 0007499041, is HEREBY CONDITIONALLY GRANTED TO THE EXTENT PROVIDED ABOVE AND OTHERWISE DENIED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

⁵⁴ By way of example, good faith negotiations require reasonable market-based rates. Although AT&T committed to meet this condition only during renewal terms, we seek to promote service in Alaska and it will apply during the remainder of the current license term as well.