



Federal Communications Commission
Washington, D.C. 20554

June 11, 2018

DA 18-601

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. 18-67

Dear Mr. Vitanza:

The Mobility Division (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-based, rather than geographic-based, construction benchmarks for a Lower 700 MHz B Block license, Call Sign WQIZ597 (Cellular Market Area (CMA) 316 Alaska 2 - Bethel) (the License or CMA316). We find that, consistent with prior precedent, strict application of Section 27.14(g) in this case would be contrary to the public interest, given the unique challenges of serving this rural Alaska CMA—including challenges that the Commission has broadly recognized in other contexts concerning 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

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 WQIZ597, Petition for Waiver, ULS File No. 0008116627 (filed March 1, 2018). On March 12, 2018, AT&T amended its petition. Request for Waiver of Lower 700 MHz Band Interim and End-of-Term Geographic Construction Benchmarks for Alaska B-Block License WQIZ597, Amended Petition for Waiver, ULS File No. 0008116627 (filed March 12, 2018) (Waiver Request). All references herein to the Waiver Request are to the March 12, 2018, amended petition.

² See *AT&T Request for Waiver of Section 27.14(g)*, Letter Order, 32 FCC Rcd 512 (WTB MD 2017) (*AT&T CMA315 Waiver Order*), *aff'd*, *Petition of AT&T Mobility Spectrum LLC for Waiver of Lower 700 MHz Band Interim and End-of-Term Geographic Construction Benchmarks for Alaska B Block License WQIZ597*, Memorandum Opinion and Order, FCC 18-24 (Mar. 5, 2018) (*AT&T CMA315 MOO*); *The Alaska Wireless Network, LLC, Request for Waiver of Section 27.14(g)*, Letter Order, 32 FCC Rcd 4728 (WTB MD 2017) (*AWN Waiver Order*), *aff'd*, *Petition of General Communication, Inc. for Waiver of Lower 700 MHz Band Interim and End-of-Term Geographic Construction Benchmarks for Alaska A-Block License WQJU656*, Memorandum Opinion and Order, FCC 18-23 (Mar. 5, 2018) (*AWN MOO*). See also, e.g., *Connect America Fund: Universal Service Reform – Mobility Fund; Connect America Fund - Alaska Plan*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10162, para. 72 (2016) (*Alaska Plan*) (citing *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17829, para. 507 (2011), *aff'd sub nom.* Direct Communications Cedar Valley, LLC, et al., 753 F.3d 1015 (10th Cir. 2014)).

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*), *upheld on reconsideration*, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Memorandum Opinion and Order on Reconsideration, 28 FCC Rcd 2671 (2013) (*700 MHz Reconsideration Order*).

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 of 35 percent, its license term will be reduced by two years, thereby requiring it to meet the Final Construction Requirement of 70 percent two years sooner.⁷ Further, if a licensee does not meet its Final Construction Requirement (whether or not accelerated) as required by Section 27.14(g)(1), it will be subject to a “keep-what-you-serve” rule under Section 27.14(g)(2), 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 amended Waiver Request on March 12, 2018,⁹ proposing to satisfy the Interim and Final Construction Requirements as follows:

- By December 13, 2016, provide coverage and offer service to at least 75 percent of CMA316’s population.¹⁰
- By June 13, 2019, provide coverage and offer service to at least 80 percent of CMA316’s population.¹¹

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. 64 (2013).

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

⁷ 47 CFR § 27.14(g)(1).

⁸ *Id.* § 27.14(g)(2). See also *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, 15349, para. 153.

⁹ We note that the Waiver Request was filed after the interim construction deadline had passed. AT&T’s construction notification for the Interim Construction Requirement was deficient in that it failed to show that AT&T had provided signal coverage and offer service over at least 35 percent of the geographic area of the license. Accordingly, pursuant to Sections 1.946(c) and 1.955(a)(2), the License authorization terminated automatically as of the interim construction deadline, December 13, 2016. See 47 CFR §§ 1.946(c), 1.955(a)(2). AT&T therefore seeks a waiver of Sections 1.946(c) and 1.955(a)(2), as well as a waiver of Sections 1.946(d) and 27.14(k), which require licensees to file a notification of construction within 15 days of the expiration of the construction deadline. See AT&T Waiver Request at 1; 47 CFR §§ 1.946(d), 27.14(k). The Commission has repeatedly emphasized that requiring licensees to timely seek relief serves important public policy objectives and has dismissed untimely requests for relief. See, e.g., *Vijay Ravenkar, The Port Authority of New York and New Jersey, Requests for Waiver to Permit Untimely Filing and to Extend the Construction Period for Station WQPK961*, File No. 0006191959, Letter Order, 29 FCC Rcd 3729 (WTB MD 2014). The Commission, however, may entertain late-filed petitions where it is in the public interest to grant relief. *Data-Max Wireless, LLC, Request for Waiver and Extension of Time of Tribal Land Bidding Credit Requirements*, Call Sign WQJQ674, File Number 0005662520, Letter Order, 29 FCC Rcd 5149, 5152-3 (WTB MD 2014). We conclude that the overarching public interest benefits supporting a waiver of both the Interim and Final Construction Requirements also support AT&T’s request that we entertain its late-filed petition.

¹⁰ AT&T Waiver Request at 9.

¹¹ *Id.*

- By June 13, 2020, provide coverage and offer service to at least 85 percent of CMA316's population.¹²

AT&T also committed to maintaining coverage and service to at least 85 percent of CMA316's population for five years from the proposed June 13, 2020, benchmark (*i.e.*, through June 13, 2025).¹³ AT&T further stated that it will file reports confirming it has met these benchmarks within 15 days of each, and that it will negotiate in good faith with any third party seeking to lease spectrum in any geographic area of CMA316 not served by AT&T.¹⁴

The Waiver Request appeared on public notice for comment on March 29, 2018.¹⁵ On April 30, 2018, the Rural Wireless Association, Inc. (RWA) filed comments opposing the Waiver Request.¹⁶ RWA argues that AT&T's Waiver Request fails to meet the Commission's waiver standard, the Waiver Request is essentially an untimely challenge of the Commission's 700 MHz rules, AT&T made a business decision not to build, and granting the Waiver Request would be counter to Commission precedent.¹⁷ In response, AT&T asserts that "RWA's objections are unconvincing because it fails to acknowledge the uniqueness of CMA316, the challenges of building and maintaining a network in its remote areas, and speculates about the ability of other providers to provide the same or better levels of service."¹⁸

The only other commenter, Arctic Slope Telephone Association Cooperative, Inc. (ASTAC), supports the AT&T Waiver Request.¹⁹ ASTAC, a provider of wireless services in Alaska and a lessee of a portion of the spectrum licensed to AT&T in a defined area within CMA316, states that Alaska's uniqueness warrants the alternative regulatory approach AT&T has proposed, and it disagrees with RWA's arguments.²⁰

Discussion. Requests to waive the requirements of the wireless construction rules must "meet a high hurdle at the starting gate."²¹ In determining whether that standard is met, we must evaluate each case based on the specific circumstances that it presents. Under Section 1.925(b)(3)(i) of the Commission's rules, the Commission may waive rule when (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and (2) a grant of the requested waiver would be in the public interest.²² Under Section 1.925(b)(3)(ii) of the Commission's rules, the Commission may waive a rule when, in view of the unique or unusual factual circumstances of the instant

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Wireless Telecommunications Bureau Seeks Comment on AT&T Request for Waiver of Geographic Coverage Requirement for 700 MHz License in Alaska*, Public Notice, DA 18-314 (WTB MD Mar. 29, 2018).

¹⁶ Rural Wireless Association Comments (RWA Comments) at 5.

¹⁷ *Id.* at 4-11.

¹⁸ AT&T Reply Comments at 2.

¹⁹ Arctic Slope Telephone Association Cooperative, Inc. Reply Comments (ASTAC Reply).

²⁰ *Id.* at 1-2.

²¹ See *WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972).

²² 47 CFR § 1.925(b)(3)(i).

case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²³

Although a waiver applicant need only satisfy *either* Section 1.925(b)(3)(i) or (ii), here, based on our review of the record before us, we find that AT&T has satisfied the requirements of *both* Sections 1.925(b)(3)(i) and (ii). Specifically, we 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”²⁴—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, application of Section 27.14(g) here would be contrary to the public interest. As discussed below, the circumstances specific to this case include: the License area’s vastness and remoteness, lack of backhaul and other infrastructure, challenging geographic and weather conditions, sparse population, rural area, and extremely limited availability of high speed broadband services compared to other parts of the country.²⁵

RWA contends that the Waiver Request is not grantable because “AT&T fails to demonstrate the presence of any [] unavoidable circumstances.”²⁶ It further claims that AT&T’s choice to wait to construct additional sites in 2019 was “a business decision made by AT&T and should not be considered a circumstance beyond the licensee’s control that would justify a waiver of the Commission’s buildout rules.”²⁷ At the outset, we note that the Commission previously has rejected RWA’s assertion that the Division may grant a waiver of Section 27.14(g) to a licensee only if unavoidable circumstances prevented it from meeting the license’s construction requirement.²⁸ We reject RWA’s assertion in this particular context as well.

While the Commission stated in the *700 MHz Second Report and Order* that it did “not envision granting waivers or extensions of construction periods except where unavoidable circumstances beyond the licensee’s control delay construction,” it did not foreclose the granting of waivers in particular cases that satisfy the FCC’s waiver rules.²⁹ Rather, the Commission anticipated that the type of waiver that AT&T seeks might be necessary in certain factual circumstances for the Lower 700 MHz band.³⁰ In fact, in the more recent *700 MHz Reconsideration Order*, the Commission explained that “[f]or specific cases of hardship . . . providers can seek waiver relief” related to their construction obligations.³¹ The Commission explained that “requests must be well founded and not based solely on grounds of low population density,” and it directed staff to “consider these types of requests on a case-by-case basis.”³² In addition, RWA’s argument conflates the standard for an extension under Section 1.946(e)(1), which expressly requires a showing that failure to meet the deadline is “due to involuntary loss of site or other

²³ *Id.* § 1.925(b)(3)(ii).

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

²⁵ *See, e.g., AT&T CMA315 Waiver Order*, 32 FCC Rcd at 512, 515; *AT&T CMA315 Waiver MOO*, at 7, para. 13; *AWN Waiver Order*, 32 FCC Rcd at 4731-32; *AWN MOO* at 8, para. 14.

²⁶ RWA Comments at 5.

²⁷ *Id.* at 7.

²⁸ *See T-Mobile License LLC, Request for Waiver of Section 27.14(g)(1)*, Memorandum Opinion and Order, 32 FCC Rcd 10619, 10624, para. 12 (2017) (*T-Mobile 700 MHz MOO*).

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

³⁰ *Id.*

³¹ *700 MHz Reconsideration Order*, 28 FCC Rcd at 2674, para. 6.

³² *Id.* at 2675, para. 9.

causes beyond [the licensee's] control,"³³ with that for waiver under Section 1.925(b)(3).³⁴ For all of these reasons, we reject RWA's contention.

RWA further argues that AT&T's Waiver Request is effectively an untimely petition for reconsideration of the Commission's decision to require geographic benchmarks in lieu of population benchmarks for Lower 700 MHz B Block licenses in the State of Alaska and must be rejected as such.³⁵ We disagree. A waiver request is not a petition for reconsideration simply because it seeks relief from a particular rule(s) for a specific set of circumstances; if it were, then all waiver requests would amount to reconsideration requests. It is well-established that the Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest,³⁶ and it may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.³⁷ RWA states that "[t]he Commission could have chosen to impose population-based buildout requirements in Alaska due to all of the factors cited by AT&T as making that State unique. It chose not to do so."³⁸ RWA is correct, but that statement alone is not dispositive. The Commission chose to evaluate these types of situations on a case-by-case basis, as we do here. Somewhat counterintuitively, RWA also highlights AT&T's ability to meet its Interim Construction Requirement for CMA317³⁹ and CMA187⁴⁰ to demonstrate that the 700 MHz rules are appropriate for Alaska and as evidence that we should not grant a waiver here.⁴¹ This argument in fact demonstrates that AT&T is not seeking a reworking of the rules for the entire State of Alaska, and has only sought waiver where the unique circumstances justify.

RWA also claims that AT&T fails to demonstrate that "the uniqueness of Alaska had anything to do with AT&T's failure to meet its interim buildout obligation in CMA316" and that its failure "by its own admission was attributable entirely to the fact that it incorrectly calculated its existing coverage by failing to include all native lands in its coverage calculations as the rules require it to do."⁴² We disagree with RWA's assessment. Rather, we are persuaded by AT&T and ASTAC's descriptions of Alaska's unique characteristics and agree with AT&T that the many unique circumstances attendant to serving CMA316, including its vast size, lack of infrastructure, its sparse population distribution, and difficult geographic and weather conditions, make it impracticable to meet the applicable geographic construction

³³ 47 CFR § 1.946(e)(1).

³⁴ RWA suggests that a request for an extension of the interim buildout deadline would have been more appropriate here, and, in response, AT&T states it would welcome an extension of the interim deadline coupled with a waiver of the Final Construction Requirement. RWA Comments at 1; AT&T Reply at 10. As we find just cause to grant AT&T a waiver of both the Interim and Final Construction Requirements, we do not consider RWA's proposal and conclude that the matter of an extension is moot.

³⁵ RWA Comments at 4-5.

³⁶ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

³⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (*WAIT Radio I*); *Northeast Cellular*, 897 F.2d at 1166.

³⁸ RWA Comments at 5.

³⁹ While RWA's comments identify this as CMA315, we assume this is a typo for CMA317. AT&T received a waiver for CMA315 but met its Interim Construction Requirement for CMA317. See *AT&T CMA315 Waiver Order*; *AT&T CMA315 Waiver MOO*; ULS File No. 0006155294.

⁴⁰ AT&T has demonstrated that it has met both its Interim and Final Construction Requirements for CMA 187. See ULS File No. 0007481104.

⁴¹ RWA Comments at 5, n.18.

⁴² *Id.* at 6.

requirements.⁴³ That AT&T at one point believed it could overcome these challenges to meet the interim requirement does not negate this fact.

As the Commission has previously stated, “Alaska is indeed unique among other markets in the 700 MHz band. The challenges of bringing widespread service to Alaska are not present in any other state to the same degree.”⁴⁴ The License area’s “harsh terrain and severe weather” create unique challenges to “constructing a wireless network to serve some of the most sparsely populated areas of the country.”⁴⁵ Covering more than 232,811 square miles,⁴⁶ CMA316 “is a massive, remote area with few or no roads (and thus can only be reached by aircraft or snowmobile) or communities and with minimal demand for service.”⁴⁷ Much of the License area consists of glaciers and mountains, and it includes the Aleutian Islands, which occupy 6,821 square miles and extend into the Pacific Ocean for about 1,100 miles.⁴⁸ In addition, as AT&T notes, in the *Alaska Plan*, the Commission found that carriers in Alaska face unique conditions due to “its remoteness, lack of roads, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, and short construction season.”⁴⁹

Alaska is the largest state by area, yet has the lowest population density of any state.⁵⁰ CMA316 itself covers an area 30 percent larger than California, with less than .5 percent of the latter’s population.⁵¹ It is closest in size to Texas, also with less than .5 percent of its population.⁵² The Commission defines a “rural” county as one with a population density of 100 persons per square mile or less;⁵³ all 10 of the boroughs (the equivalent of counties) comprising CMA316 are rural.⁵⁴ In fact, CMA316 has an average population density of one person per square mile, with five of the 10 boroughs having a population density of less than half a person per square mile, and the other five having a density of less than four

⁴³ See Waiver Request at 6-7; AT&T Reply at 2.

⁴⁴ *AT&T MOO* at 11, para. 23.

⁴⁵ ASTAC Comments at 1.

⁴⁶ See FCC’s Geographic Information Systems Database, <https://www.fcc.gov/general/geographic-information-systems> (FCC GIS Database).

⁴⁷ Waiver Request at 7.

⁴⁸ See <http://alaskaweb.org/region-scentral.html>; <http://alaskaweb.org/region-swest.html>; <https://www.britannica.com/place/Aleutian-Islands>.

⁴⁹ AT&T Reply at 5 (citing the *Alaska Plan*, 31 FCC Rcd 10139, 10162, para. 72).

⁵⁰ See Waiver Request at 6; FCC GIS Database; 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> (2010 Alaska Census).

⁵¹ California comprises more than 163,464 square miles, with a population of 37,253,956. See FCC GIS Database; 2010 State and Local Census Guide. CMA316 has a population of 200,813. ULS, Call Sign WQIZ597, Market.

⁵² Texas comprises more than 268,585 square miles, with a population of 25,145,561. See FCC GIS Database; 2010 State and Local Census Guide.

⁵³ *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).

⁵⁴ See 2010 Alaska Census.

persons per square mile.⁵⁵ As AT&T states, the “rural areas of Alaska are historically underserved.”⁵⁶ “Alaska ranks last in the United States for access to broadband service with a speed greater than 25 Mbps and last among the states with download speeds greater than 3 Mbps combined with upload speeds of greater than 0.7 Mbps. Alaska also is 49th of 50 states in terms of population served by no broadband service provider and by at least one broadband provider and 50th out of 50 states in terms of population served by at least two broadband providers.”⁵⁷

In addition, the Commission, in the *700 MHz Second Report and Order*, emphasized that it was creating licenses in the Lower 700 MHz A and B Block “based on *smaller geographic service areas*, which would be more readily available to providers that tend to serve rural consumers,” and that the “keep-what-you-serve” approach allowed for the creation of even smaller areas.⁵⁸ Commission records show that the average size of a CMA in the United States is approximately 5,526 square miles, while the average size of a REAG is about 337,993 square miles.⁵⁹ At 232,811 square miles, CMA316 is larger than five of the 12 REAGs.⁶⁰ Given the considerations identified here, we consider waiving the applicable buildout requirements with the specified conditions instead to lead to an outcome comparable to that which the Commission envisioned for REAGs.⁶¹

RWA also disputes AT&T’s contentions that a waiver would serve the public interest because: “(i) enforcement of the buildout rules ‘would merely delay broadband deployment at least in the near future’; (ii) [o]ther providers would not likely claim the unserved areas and provide service in these remotest and sparsely populated areas[,]’ and[] (iii) ‘even if claimed, those new licensees would experience the same challenges as AT&T and not likely meet their geographic coverage benchmarks.’”⁶² Rather, RWA says, “[t]hese assertions are unsupported, purely speculative and are contrary to the facts and the law.”⁶³ As support for its conclusion, RWA points to the fact that AT&T “currently has in place or has applications pending for spectrum leases that it has entered into with two unaffiliated service providers who are willing and able to provide services in CMA316” and “suggest[s] that there are likely other carriers that would desire to do so as well.”⁶⁴ It also argues that, because AT&T has stated it plans to build its next sites in 2019, “AT&T does not appear to be in any great rush to expand service in CMA

⁵⁵ See Waiver Request at 6 (citing *Application of the Alaska Wireless Network, LLC and T-Mobile License LLC for Consent To Assign License*, Memorandum Opinion and Order, 31 FCC Rcd 4447, 4454 (2016)); AT&T Reply at 4; 2010 Alaska Census.

⁵⁶ AT&T Reply at 4.

⁵⁷ *Id.* 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; Nat’l Telecommunications & Info. Admin., U.S. Dep’t of Commerce, U.S. Broadband Map, June 2014, available at <https://www.broadbandmap.gov/rank/all/state/percent-population/within-nation/speed-download-greater-than-3mbps-upload-greater-than-0.768mbps/ascending/>; Federal Communications Commission, Compare Broadband Availability in Different Areas (Dec. 2016), available at https://broadbandmap.fcc.gov/#/area-comparison?selectedTech=acfosw&selectedSpeed=25_3&searchtype=state.

⁵⁸ *700 MHz Second Report and Order*, 22 FCC Rcd at 15348-49, paras. 155-56 (emphasis added).

⁵⁹ See FCC GIS Database.

⁶⁰ See *id.*; FCC, Auctions, Maps, <http://wireless.fcc.gov/auctions/data/maps/REAG.pdf>.

⁶¹ See *AT&T CMA315 MOO* at 10, para. 19; *AWN MOO* at 10-11, para. 21; *700 MHz Reconsideration Order*, 28 FCC Rcd at 2674, para. 6.

⁶² RWA Comments at 7 (quoting AT&T Waiver Request at 7.).

⁶³ *Id.*

⁶⁴ *Id.* at 8.

316 and might not have done all that it reasonably could have to maximize geographic coverage in this market prior to the interim construction deadline.⁶⁵ We see no evidence to support RWA's claims and agree with AT&T that "[t]his is pure speculation."⁶⁶

Rather, consistent with prior decisions, we 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 might otherwise continue to be underserved. We believe that, absent a waiver, the provision of wireless services to Alaskans in CMA316, especially those residing in particularly remote areas, could be delayed, frustrating the underlying purpose of Section 27.14(g).⁶⁷ As AT&T explains, “communities in Alaska often arise in pockets far from other communities and population centers.”⁶⁸ With the requested waiver relief, AT&T would have the needed flexibility to “easily serve those new communities that might periodically arise in CMA316 and to complete plans to expand coverage over the next two years...[.]” including to “an additional 4,300 Alaska natives and an additional 200 square miles of Alaska native lands, numbers that will only increase. . . .”⁶⁹

We are persuaded that “AT&T’s arrangement with its lessees is part of a larger relationship where AT&T shares resources, such as switching services, that may not otherwise be available to those lessees, allowing the lessees to bring LTE to portions of Alaska much faster.”⁷⁰ This is further supported by ASTAC’s explanation that a waiver grant would actually assist its own deployment, and that, counter to RWA’s claims, “denying AT&T’s waiver request would halt ASTAC’s ongoing deployment of its 700 MHz network *because* the leased area would revert to the Commission for re-licensing.”⁷¹ In fact, ASTAC, one of the lessees to which RWA refers,⁷² states that enforcing the strict application of Section 27.14(g)’s geographic benchmarks in CMA316 “would have the very real impact of delaying the pending deployment of wireless services to areas that need those services now and pushing the availability of wireless service to an unknown future date.”⁷³

AT&T has committed to serving 75 percent of CMA316’s population by the December 13, 2016, interim construction deadline; 80 percent of the area’s population by the June 13, 2019, end-of-license term construction deadline; and 85 percent of the area’s population by June 13, 2020.⁷⁴ AT&T’s commitment to extend service to at least 80 percent of CMA316’s population by June 13, 2019, and to at least 85 percent of CMA316’s population by June 13, 2020, would bring new advanced wireless services to Alaskans living in remote areas of CMA316 that they may not receive absent the requested waiver. We note that by covering 85 percent of CMA316’s population, AT&T would be serving a benchmark 15

⁶⁵ *Id.*

⁶⁶ AT&T Reply at 5.

⁶⁷ See *AT&T CMA315 Waiver Order*, 32 FCC Rcd at 516; *AT&T CMA315 MOO* at 9, para. 18; *AWN Waiver Order*, 32 FCC Rcd at 4728; *AWN MOO* at 9, para. 18.

⁶⁸ Waiver Request at 6.

⁶⁹ *Id.* at 6, 9.

⁷⁰ AT&T Reply at 5.

⁷¹ ASTAC Reply at 2 (emphasis added).

⁷² See RWA Comments at 8.

⁷³ ASTAC Reply at 2.

⁷⁴ AT&T Waiver Request at 9.

percentage points higher than the 70 percent population benchmark for the Lower 700 MHz E Block,⁷⁵ and would meet a higher population-based benchmark than required in any other commercial service.⁷⁶

Consistent with prior Commission precedent, and in light of the combination of unique circumstances present here, we find that strict application of Section 27.14(g) would be contrary to the public interest.⁷⁷ In addition, we find that the unique facts presented by AT&T fit within the ambit of “specific cases of hardship” envisioned by the Commission in the *700 MHz Reconsideration Order* as potential grounds for waiving construction requirements based on geographic benchmarks.⁷⁸ We agree with AT&T that a conditioned waiver is in the public interest, “meets the Commission’s policy objectives, promotes the deployment of 700 MHz B-block services to less densely populated areas, and avoids application of geographic coverage benchmarks that would frustrate the underlying purpose of the build requirements—to promote access to spectrum and the provision of service, especially in rural

⁷⁵ See Waiver Request at 9; AT&T Reply at 3; *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.).

⁷⁶ See AT&T Dec. 2 *Ex Parte* at 2. See also, e.g., 47 CFR §§ 24.203 (PCS), 27.14(s) (AWS-1). AT&T also argues that its “experience with the Cellular service demonstrates that incumbent licensees are much more likely to expand their service areas to accommodate new communities than is a third party to claim and build-out unserved area.” Waiver Request at 7. Similar to the keep-what-you-serve licensing regime of the 700 MHz band, parties may apply for unserved areas in the Cellular Radiotelephone Service band. See 47 C.F.R. 22.911. AT&T states that Commission records show that “[d]espite the presence of significant Cellular unserved area to claim in CMA316 over the last 25 years, the vast majority of the CMA remains unserved,” Waiver Request at 7 (citing Maps of CGSAs for Each Market: CMAs 176-351, page 141, available at http://wireless.fcc.gov/services/cellular/A_Block_PDF_Map_CMA176-CMA351.pdf), and that the Commission itself has stated that “[i]t is likely to be many years before the Alaskan CMA Blocks are substantially built out.” *Id.* (citing *Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, Notice of Proposed Rulemaking and Order, 27 FCC Rcd 1745, 1762 (2012)).

⁷⁷ See generally *AT&T CMA315 Waiver Order*; *AT&T CMA315 MOO*; *AWN Waiver Order*; *AWN MOO*. See also *T-Mobile License LLC Request for Waiver of Section 27.14(g)(1)*, WT Docket No. 16-319, Letter Order, 31 FCC Rcd 13379 (WTB Mobility Div. 2016); *T-Mobile 700 MHz MOO*.

⁷⁸ *700 MHz Reconsideration Order*, 28 FCC Rcd at 2674, para. 6. RWA argues that the Division’s decision to deny a licensee’s request for a population-based alternative final benchmark for two Lower 700 MHz band licenses in American Samoa where, according to RWA, the buildout challenges are “nearly identical,” is controlling here. RWA Reply at 10 (citing *AST Telecom, LLC d/b/a Bluesky, Request for Waiver of Interim and Final Geographic Construction Benchmarks for Lower 700 MHz Band A and B Block Licenses WQJQ800 and WQOU674 in American Samoa*, 32 FCC Rcd 9307 (WTB Mobility Div. 2017) (*Bluesky Waiver Order*)). RWA made a substantially similar argument during the *AT&T CMA315 MOO* proceeding. See *Ex Parte* Letter from Caressa D. Bennet, General Counsel to RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-335, at 2 (filed Nov. 30, 2017). The Commission in the *AT&T CMA315 MOO* specifically rejected this argument, stating that “[i]n its effort to lump together Alaska and American Samoa for purposes of assessing requests for waiver of Section 27.14(g), RWA ignores a fundamental difference between the two areas: AT&T’s License Area is 376,863 square miles in contrast to Bluesky’s American Samoan license areas, which cover about 551 square miles. The challenges associated with buildout in this specific area within Alaska are therefore much more significant than the specific areas in American Samoa covered by the Bluesky licenses, and in that regard, AT&T and Bluesky are not similarly situated. A waiver is thus appropriate in the instant situation.” *AT&T CMA315 MOO* at 12 n.102. See also AT&T Reply at 11-12. As in the *AT&T CMA315 MOO*, the License area at issue here is substantially larger than Bluesky’s, covering more than 232,811 square miles. We find, as the Commission did in the *AT&T CMA315 MOO*, that the *Bluesky Waiver Order* is inapposite here.

areas.⁷⁹ We are adopting stringent performance benchmarks and certain conditions below to ensure that, consistent with Section 309 of the Act⁸⁰ and the underlying purpose of Section 27.14(g), AT&T brings new services to remote communities in CMA316. 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.⁸¹

Coverage Benchmarks and Waiver Conditions. To ensure that the benefits of the waiver relief are realized by citizens in isolated areas of CMA316, 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)).⁸²

1. *75 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 75 percent of CMA316's population by December 13, 2016. 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. AT&T must modify its interim notification of construction⁸³ for Call Sign WQIZ597⁸⁴ to demonstrate its population coverage as of December 13, 2016, within 15 days of the date of this Order.
2. *80 Percent Population Coverage Benchmark.* By June 13, 2019, AT&T must provide signal coverage and offer service to at least 80 percent of CMA316's population.⁸⁵ 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. In addition, so that the Bureau may determine AT&T's served geographic portion as of June 13, 2017, AT&T must file with the Bureau a showing demonstrating its geographic coverage area as of June 13, 2017, within 15 days of the date of this Order.

⁷⁹ Waiver Request at 8.

⁸⁰ 47 U.S.C. § 309.

⁸¹ 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.

⁸² See *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, 15349, para. 153; 47 CFR § 27.14(g)(2).

⁸³ See 47 CFR 1.947(d).

⁸⁴ ULS File No. 0007573088.

⁸⁵ AT&T must file a notification of construction demonstrating that it has met this benchmark. See 47 CFR 1.947(d).

3. *85 Percent Population Coverage Benchmark.* By June 13, 2020, AT&T must provide signal coverage and offer service to at least 85 percent of CMA316's population.⁸⁶ 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.
4. *Continuity of Coverage.* AT&T must maintain coverage and service to at least 85 percent of CMA316'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 CMA316'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 CMA316 not served by AT&T.⁸⁷ 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 Sections 1.946(b)-(d), 1.955(a)(2), and 27.14(g) and (k) of the Commission's rules, 47 CFR §§ 1.946(b)-(d), 1.955(a)(2), and 27.14(g), (k), filed March 1, 2018, and as amended on March 12, 2018, by AT&T Mobility Spectrum LLC, ULS File No. 0008116627, 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

⁸⁶ *Id.*

⁸⁷ By way of example, good faith negotiations require reasonable market-based rates.