

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition of AT&T for Waiver of Lower)	
700 MHz Band Interim and End-of-Term)	WT Docket No. 16-335
Geographic Construction Benchmarks for)	
Alaska B-Block License WQIZ358)	

APPLICATION FOR REVIEW OF THE RURAL WIRELESS ASSOCIATION, INC.

RURAL WIRELESS ASSOCIATION, INC.

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February 17, 2017

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Summary

RWA seeks review and rescission of the WTB's decision granting AT&T a waiver of both the interim and final geographic coverage requirements contained in rule section 27.14(g) for its Lower 700 MHz B Block license, Call Sign WQ1Z358 in CMA315 Alaska 1-Wade Hampton. The waiver is conditioned on AT&T making some very modest incremental increases in its service coverage (expanding service to reach an additional ten percent of the population over the next nine years). In return, AT&T is granted a windfall that will allow it to retain the exclusive right to utilize the licensed spectrum in upwards of 90 percent of the geographic territory of its license area, the preponderance of which will likely remain unserved even if those conditions are met.

The Bureau's Waiver Letter stands in conflict with FCC regulation, past precedent, and public policy, and establishes a harmful precedent which should be overturned. The Waiver Letter also fails to satisfy the waiver criteria of section 1.925(b)(3) of the Commission's rules. In failing to enforce the stringent performance requirements imposed on 700 MHz B Block licenses, the Bureau's action effectively allows AT&T to warehouse spectrum in a geographic area larger than the State of Texas and preclude competition from third party providers in that area, directly undermining the policies underlying those performance requirements to the detriment of the public.

The waiver is not necessary to achieve service expansion within CMA315. Enforcing the existing performance requirements would in no way preclude AT&T from continuing to expand service in that market. To the contrary, enforcing the existing rules would merely put AT&T on equal footing with third parties that desire to provide service within the vast unserved portions of CMA315 and would serve the public interest by expanding the service provided to unserved areas. This is exactly the result the performance requirements were designed to achieve and AT&T is in no way harmed by application of the rules as written.

The waiver is not justified by the condition that requires AT&T to negotiate in good faith with third parties desiring to serve unserved areas in CMA315. A requirement to engage in good

faith negotiations does not guarantee third party access to AT&T's spectrum in unbuilt areas as would be the case if the rules were applied as written. Additionally, it is for the Bureau to take the position that reliance on the "keep-what-you-use rule" in CMA315 could delay service to unserved areas and new communities by AT&T while at the same time requiring third party providers desiring to serve those same areas to incur the significant expense and delay of having to negotiate a purchase agreement or spectrum lease with AT&T. Instead of allowing third party providers the opportunity to provide services throughout a rather large unserved geographic area on equal footing with the licensee, AT&T can instead require that competing service providers pay AT&T for the privilege of serving those areas AT&T has chosen not to serve. This stands the performance requirements on their head and cannot be justified on any public interest grounds.

For the foregoing reasons, RWA requests that the Commission rescind the Bureau's Waiver Letter and require AT&T to comply with the same performance requirements that apply to all other similarly situated 700 MHz licensees.

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APPLICATION FOR REVIEW OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”), pursuant to Section 1.115 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”), seeks review of a decision by the Chief of the Mobility Division of the Wireless Telecommunications Bureau (“WTB” or “Bureau”) released January 18, 2017 in the above-captioned proceeding.¹ That decision granted AT&T Mobility Spectrum, LLC (“AT&T”) a waiver of both the interim and final geographic coverage requirements contained in rule section 27.14(g) for its Lower 700 MHz B Block license, Call Sign WQ1Z358 (Cellular Market Area (CMA) 315 Alaska 1-Wade Hampton). The waiver is conditioned upon AT&T meeting certain population coverage benchmarks during the remainder of its license term and into the renewal term. Without the waiver, the rules would reduce AT&T’s current license term by two years, from June 13, 2019 to June 13, 2017 due to AT&T’s failure to provide coverage to at least 35% of its license area by December 13, 2016.² The waiver also protects AT&T from losing the exclusive right to

¹ Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Robert Vitanza, AT&T Services, Inc., DA 17-63, WT Docket No. 16-335, rel. January 18, 2017 (“Waiver Letter”).

² AT&T admits that in CMA315 it “will not meet the 35% geographic coverage benchmark or the 70% end-of-term geographic coverage benchmark.” *Request for Waiver of Lower 700 MHz Band Interim and End-of-Term Geographic Construction Benchmarks for Alaska B Block*

construct and provide service to what could be upwards of 90 percent of geographic area within CMA315 that remains unbuilt and unserved at the end of the license term as long as the waiver conditions are met. The Waiver Letter stands in conflict with FCC regulation, past precedent, and public policy, and establishes a harmful precedent which should be overturned.

I. Summary of Facts

In 2008, Lower 700 MHz B Block license WQIZ358 was originally issued to AlasConnect, Inc. (“AlasConnect”) following Auction No. 73. That license was subsequently acquired from AlasConnect by AT&T on September 23, 2014. Like all Lower 700 MHz B Block licenses, WQIZ358 was issued subject to an interim construction deadline requiring it to provide coverage to at least 35 percent of the geographic area of CMA315 by June 13, 2013, later extended to December 13, 2016,³ and a final construction deadline requiring it to provide coverage to at least 70 percent of the geographic area of CMA315 by the end of the license term.

In anticipation of its upcoming December 13, 2016 interim construction deadline, AT&T filed the Waiver Request on October 11, 2016, and proposed 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, 2019.⁴ Because AT&T's interim construction showing indicated that AT&T was already serving 70 percent of the population in its market (albeit with service to only about nine percent of the geography) AT&T was effectively asking

License WQIZ358, ULS File No. 0007499041 at p.2 (filed Oct. 11, 2016) (Waiver Request). In fact, even though AT&T claims that it presently provides coverage to 70 percent of the population in its licensed market, it provides coverage to only a small fraction, 8.7 percent, of the geographic area in CMA315, even after excluding Government Lands where it does not provide service. See ULS file no. 0007602932, Exhibit-Pops Coverage, Exhibit-Geographic Coverage.

³ See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122 (2013).

⁴ Waiver Request at p. 3.

the Commission to find that both its interim and final service requirements had been met without obligation to undertake any additional service expansion.

Apparently believing that it needed to sweeten the pot and give the Commission staff at least a public interest claim that the waiver would encourage additional construction in the license area, AT&T subsequently supplemented its Waiver Request to propose that providing coverage to 70% of the population satisfy the interim benchmark and commit to providing service to 75% of the population by June 13, 2019 and to 80% of the population by June 13, 2020 (during the license renewal term). In the event that either the 75% or the 80% benchmark is not met, AT&T proposed that it would lose the right to serve any areas that it did not serve as of June 13, 2017 (which would have become the new license expiration date had the Commission applied its rules to shorten the current license term by two years following AT&T's admitted failure to meet its interim construction deadline).⁵

AT&T's Waiver Request was put out on public notice and RWA filed comments in opposition.⁶ In those comments, RWA argued that granting a waiver of geographic-based construction requirements in Section 27.14(g) would undermine the rule's purpose, which was to prevent the warehousing of spectrum, and therefore would not serve the public interest, as required by Section 1.925 of the Commission's rules. RWA also argued that harsh conditions and extremely low population densities in Alaska do not warrant waiver relief under Section 1.925 and that the waiver would actually foreclose providers other than AT&T from using that

⁵ See Ex Parte Letter from Celia Nogales, AVP-Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-3 19 (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).

⁶ Rural Wireless Association Comments, WT Docket Nos. 16-402 and 16-335 (Jan. 3, 2017) (RWA Comments).

spectrum to expand service to unserved portions of CMA315.⁷ The Bureau, acting on delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, nevertheless found that granting a waiver, conditioned on meeting the revised population benchmarks proposed by AT&T, would serve the public interest by “fostering the provision of new wireless services to areas of Alaska that may otherwise continue to be underserved. . . . [and] 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.”⁸ The Bureau sought to address RWA’s spectrum warehousing concerns by imposing an additional waiver condition that requires AT&T to 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.⁹

II. Question Presented for Review

The question presented to the Commission in this Application for Review is whether the WTB impermissibly granted AT&T a waiver of the geographic buildout obligations imposed by Section 27.14(g) pursuant to FCC Rule Section 1.925(b)(3) and Commission precedent. As demonstrated herein, the waiver grant undermines the purpose of Section 27.14(g), which is to prevent spectrum warehousing, and thus does not serve the public interest. Because the waiver request therefore failed to satisfy either prong of Section 1.925(b)(3), the waiver was granted in error and the waiver grant should be overturned and rescinded by the Commission.

⁷ RWA Comments at pp. 4-6.

⁸ Waiver Letter at p. 6.

⁹ Waiver Letter at p. 7.

III. Argument

Section 1.925(b)(3) of the rules provides that the Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, *and* that 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.¹⁰

The Waiver Letter fails to meet either of these standards.

A. The Waiver Letter Fails to Satisfy the Waiver Criteria of Section 1.925(b)(3)(i)

With respect to Section 1.925(b)(3)(i), the Waiver Letter focuses entirely upon the “public interest benefit” of requiring AT&T to expand service to an additional 10 percent of the population in CMA315 but does not provide any explanation, much less analysis, that would justify allowing AT&T to retain the exclusive right to serve the approximately 90 percent of the geographic area of CMA315 that remains unserved more than eight years after the license was granted.¹¹ Similarly, the Waiver Letter contains no plausible discussion as to how the waiver granted to AT&T furthers the purpose underlying the performance requirements in section 27.14(g) of the rules or how enforcing the geographic construction benchmarks would frustrate the purpose of the rule in this case.

¹⁰ 47 C.F.R. §1.925(b)(3) (emphasis added).

¹¹ Based on the Bureau’s own finding that CMA315 consists of 376,863 square miles, the Bureau’s action allows AT&T to effectively warehouse Lower 700 MHz B Block spectrum in a geographic area covering up to 339,176 square miles, an area larger than the State of Texas. Waiver letter at p. 4.

The Commission’s decision to impose geographic construction benchmarks coupled with stringent performance requirements for all previously unauctioned Economic Area (“EA”) and Cellular Market Area (“CMA”) Lower 700 MHz licenses was a deliberate policy adopted after careful consideration of the alternatives.¹² In reaching this decision, the Commission considered and rejected using the same “substantial service” benchmark and “rural safe harbor” criteria that it had adopted for previously auctioned 700 MHz licenses.¹³ The Commission clearly indicated its expectation “that licensees [would] take these construction requirements seriously” and that it “[did] not envision granting waivers or extensions of construction periods except where unavoidable circumstances beyond the licensee’s control delay construction.”¹⁴

The Commission explained that geographic benchmarks would “better promote access to spectrum and the provision of service, especially in rural areas”¹⁵ Specifically, the Commission noted that “[b]y taking advantage of the excellent propagation characteristics of the spectrum in the 700 MHz Band, which enables broader coverage at lower costs, we promote the provision of innovative services to consumers *throughout the license areas, including in rural areas.*”¹⁶ The Commission could not have made its intent more clear when it stated that “[w]ith regard to the use of geographic-based benchmarks for licenses based on CMAs and EAs, *we seek to promote service across as much of the geographic area of the country as is*

¹² These performance requirements include accelerating the end of the license term by two years if the interim geographic benchmark is not met and a “keep-what-you-use” rule that removes all unserved areas from the license territory if the end of term benchmark is not met. See 47 C.F.R. §27.14(h).

¹³ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.; Second Report and Order, WT Docket No. 06-150, et al., rel. Aug. 10, 2007 (“Second Report and Order”) at ¶153.

¹⁴ Id.

¹⁵ Id.

¹⁶ Second Report and Order at ¶154.

practicable.”¹⁷

Significantly, the Commission specifically considered and rejected imposing a population based buildout requirement for CMA and EA based licenses as advocated by several larger carriers, including AT&T, and chose instead to require carriers to maximize geographic coverage within their markets, stating:

With regard to the use of geographic-based benchmarks for licenses based on CMAs and EAs, we seek to promote service across as much of the geographic area of the country as is practicable. . . . We agree . . . that the uniqueness of the 700 MHz spectrum justifies the use of geographic benchmarks and that the band’s excellent propagation characteristics make it ideal for delivering advanced wireless services to rural areas. Accordingly, for licenses based on these CMAs and EAs that are well-suited for providing service in rural markets, we establish benchmarks that require build-out to a significant portion of the geographic area.¹⁸

By contrast, population-based benchmarks were found suitable only for the Upper 700 MHz C Block and C1 Block, which were to be licensed on a far larger Regional Economic Area Group (“REAG”) basis to encourage the development of new nationwide and/or regional services.¹⁹ The Commission explained that a population-based benchmark “is appropriate for licensees with large geographic areas to allow for roll out of advanced services on a nationwide or regional basis. . . . [because] of the significant capital investment and logistical challenges associated with building a regional or nationwide system without an existing infrastructure.”²⁰

The need to employ population benchmarks in order to accommodate a nationwide rollout or new service provider simply does not apply in the case of AT&T’s Waiver Request. As

¹⁷ Second Report and Order at ¶158 (emphasis supplied).

¹⁸ Second Report and Order at ¶158.

¹⁹ The country is divided into 12 REAGs, 176 EAs and 734 CMAs. *See* 47 C.F.R. §27.6. The entire State of Alaska comprises REAG 7. As noted in the Waiver Letter, CMA315 represents less than one-half of the territory of REAG 7.

²⁰ Second Report and Order at ¶164.

indicated earlier, AT&T's initial Waiver Request would not have required it to expand service beyond the 70 percent of the population (less than nine percent of the geography) it already serves. Rather, the Waiver Request, even as supplemented by AT&T, serves only one purpose – to avoid application of the “keep-what-you-use rule” and allow AT&T to retain exclusive rights to Lower 700 MHz B Block spectrum throughout the entirety of CMA315 without any requirement to expand its coverage to the vast preponderance of the market territory (up to 90 percent) that will in all likelihood remain unserved even if all of the conditions set forth in the Waiver Letter are met. This is directly contrary to policies underlying the strict performance requirements adopted by the Commission.

In adopting its performance requirements, the Commission was cognizant of the need to serve rural areas and the desires of rural carriers for smaller license areas. To accomplish this, the Commission ultimately decided to license the Lower 700 MHz B Block on a CMA basis. However, the Commission was also cognizant of the fact that in certain cases even a CMA, such as CMA315, could still be too large or too challenging for a single operator to serve and specifically implemented a “keep-what-you-use” rule to ensure that spectrum can be put to use in unserved areas by providers other than the licensee.

Overall, we conclude that these set of stringent benchmarks applied across smaller service areas with effective consequences for noncompliance, when combined with appropriately sized geographic licensing areas, are the most effective way to promote rapid service to the public, especially in rural areas. As noted above, the most common recommendation for promoting rural service made by small and rural providers was that additional licenses be made available based on smaller geographic service areas, which would be more readily available to providers that tend to serve rural consumers.

* * *

[O]ur “keep-what-you-use” rules provide additional methods for making smaller license areas available, thus promoting access to spectrum and the provision of

service, especially in rural areas. This rule ensures that others are given an opportunity to acquire spectrum that is not adequately built out and provide services to those who reside in those areas. In this way, our rules are pro-competitive and help ensure service to communities that might otherwise not receive service. In sum, we conclude that our approach should effectively promote service, including in rural areas, while establishing a clear regulatory framework for licensees as they develop their business plans.²¹

During the rulemaking proceeding resulting in adoption of the performance requirements, RWA (fka Rural Telecommunications Group, Inc.) repeatedly emphasized the importance of adopting rules that would prevent spectrum warehousing.²² To ensure that the rules achieve their intended purpose, the FCC must enforce them fairly. The Bureau's Waiver Letter fails to do so.

The Bureau's Waiver Letter rests upon the false and entirely untested premise that application of the Commission's strict performance requirements would impair, rather than further, the provision of service to unserved areas in CMA315. In granting the waiver requested by AT&T, the Bureau, without any analysis, just accepted AT&T's arguments that the waiver was necessary to ensure that service was expanded to unserved areas and new communities.

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. 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." 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.

* * *

²¹ Second Report and Order at ¶¶155-156.

²² See Comments of the Rural Telecommunications Group, Inc., WT Docket No. 05-160, et al., September 29, 2006, at pp. 8-9; Comments of the Rural Telecommunications Group, Inc., WT Docket No. 05-160, et al., May 23, 2007, at pp. 8-12; Reply Comments of the Rural Telecommunications Group, Inc., WT Docket No. 06-150, et al., June 4, 2007, at pp. 8-11.

[W]e 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 27.1 4(g)-to promote access to spectrum and the provision of service especially in rural areas.²³

This is simply not the case.

In opening up unserved geographic areas to competition under the keep-what-you-use rule, the Commission did not preclude the incumbent licensee from applying to serve some or all of the unserved territory that previously had been part of its license area. Section 27.14(j) of the Commission's rules only restricts the licensee from applying to serve any portion of the reclaimed area for a period of thirty days following the issuance of a public notice by the WTB that the reclaimed license area is available for reassignment. The purpose of this provision is to give third party providers the first opportunity to apply for areas that the incumbent licensee had the opportunity, but failed, to serve. After expiration of that 30-day window, the incumbent licensee remains free to apply for any unserved areas that have not been applied for during that initial window. Application of the Commission's rules as written serves to incent, and not as claimed by the Bureau delay, service to new communities and unserved areas by making the spectrum more widely available to all qualified applicants, including the incumbent licensee, in furtherance of the stated policies underlying the rules.

B. The Waiver Letter Fails to Satisfy the Waiver Criteria of Section 1.925(b)(3)(ii).

Likewise, the Waiver Letter fails to provide support for the relief granted to AT&T under Section 1.925(b)(3)(ii) of the rules. While RWA acknowledges that Alaska is large, rural, low density, and subject to weather extremes, it is not entirely unique in this regard. There are

²³ Waiver Letter at pp. 5-6 (citations omitted).

other areas of the country outside of Alaska that are rural, low density and subject to weather extremes and that also present their own terrain challenges. The point is that the Commission could have adopted special provisions for Alaska and other challenging areas had it wished to do so when it adopted its performance requirement. It did not.

Nor can it be seriously argued that AT&T is in any different position than any of the other 700 MHz licensees that are subject to the same geographic benchmarks and stringent performance requirements for their licenses. AT&T has already cream-skimmed its license area as evidenced by its buildout showing that indicates it is serving over 70 percent of the population in CMA315 while only covering less than nine percent of the geographic area comprising its market. AT&T, as a sophisticated carrier, undoubtedly factored in the impact of the “keep-what-you-use” rule when it negotiated to acquire WQIZ358 from AlasConnect in 2014 and discounted the purchase price accordingly.

More importantly, denying A&T’s waiver request would not prevent AT&T from continuing to expand service within CMA315 should it desire to do so since it would remain free to apply to the Commission to expand its service into the unserved areas in CMA315 pursuant to Section 27.14(j)(2) of the Commission’s rules. The only advantage AT&T would lose is the ability to keep other providers from serving the unserved portions of CMA315, an advantage that does not support either the public interest or the policies that underlie the rules.²⁴

Simply put, AT&T is in no way harmed or disadvantaged by application of the geographic construction benchmarks contained in Section 27.14(g) and other performance requirements contained in Section 27.14(h) of the Commission’s rules. To the contrary, the

²⁴ In AT&T’s view, it would not even lose this small advantage as it believes that “[other] providers would not likely claim the unserved areas and provide service in these remote and sparsely populated areas.” Waiver Letter at n. 41.

waiver granted by WTB provides a windfall to AT&T by allowing it to warehouse spectrum covering an area larger than the State of Texas within its market without any build out obligations beyond the modest conditions contained in the Waiver Letter. The Bureau's Waiver Letter thus directly undermines the purpose and policies underlying the strict performance requirements that apply to all Lower 700 MHz B Block licensees and, by precluding market entry by other providers, ultimately disserves the public interest.

C. Good Faith Negotiations Requirement Does Not Cure the Waiver Deficiencies.

The Bureau has attempted to shore up the infirmities in its waiver analysis and deal with spectrum warehousing concerns by imposing as a condition of the waiver a requirement that AT&T engage in good faith negotiations with any third party that wants to acquire the rights, through sale or lease, to serve the unserved areas of CMA315.²⁵ Specifically, the Waiver Letter states "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."²⁶ This clumsy attempt to backfill the deficiencies in the Bureau's waiver analysis is simply putting lipstick on a pig.

Initially, a requirement to engage in good faith negotiations does not guarantee third party access to AT&T's spectrum in unbuilt areas. The requirement to negotiate in good faith is not the same as requiring a party to make a deal. Take, for example, the fact that the FCC has spent the last year and one-half wrestling with what constitutes a failure to negotiate in good faith in

²⁵ Waiver Letter at p. 7.

²⁶ Waiver Letter at p. 6.

the context of retransmission consent negotiations without yet being able to issue an order on how to better define the presence or absence of good faith in market negotiations.²⁷

Additionally, it is grossly inconsistent for the Bureau to take the position that reliance on the keep-what-you-use rule in CMA315 could delay service to unserved areas and new communities by AT&T while at the same time requiring third party providers desiring to serve those same areas to negotiate a purchase agreement or spectrum lease with AT&T when those negotiations would invariably drag on for months with no guarantee that an agreement would ever be forthcoming. Similarly, it is inconsistent for the Bureau to take the position that the difficulties of providing service in rural Alaska are so onerous that they justify granting relief to AT&T without also acknowledging that those burdens would be magnified when faced by third party providers that would be required to expend not only the capital costs to provide service to sparsely populated unserved areas, but also incur the expense to acquire spectrum rights from AT&T and pay AT&T to lease spectrum.

The imposition of a good faith negotiation condition requirement on AT&T's waiver is not a burden but rather represents another windfall that rewards AT&T for failing to meet its buildout obligations. Instead of allowing other third party providers to have the opportunity to provide services throughout a rather large unserved geographic area on equal footing with the licensee, AT&T can instead require that competing service providers pay it for the privilege of serving those areas AT&T has chosen not to serve. This stands the performance requirements on their head and cannot be justified on any public interest grounds.

²⁷ See *In the Matter of Implementation of Section 103 of the STELA Reauthorization Act of 2014; Totality of the Circumstances Test*, MB Docket 15-216, Notice of Proposed Rulemaking, FCC 15-109 (rel. September 2, 2015).

IV. Conclusion

For the reasons set forth above, the Waiver Letter should be rescinded. The Waiver Letter failed to satisfy the criteria for grant of a waiver set forth in Section 1.925. The Waiver Letter failed to demonstrate that a waiver would serve the public interest, or that granting a waiver would be was consistent with the underlying purpose of the rule. The Bureau likewise failed to provide any evidence to support its claim that the waiver was necessary to expand the provision of service to the public and ignored all indications that the waiver would have just the opposite results. Finally, the Bureau failed to demonstrate how enforcing the Commission's performance requirements would be inconsistent with the underlying purpose of the rule, which was to maximize the geographic availability of advanced services using 700 MHz spectrum. The Bureau's grant of a waiver in these circumstances establishes dangerous precedent which eviscerates and re-writes existing law and conflicts with case precedent and Commission policy, and should therefore be reversed and rescinded.

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February 17, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have on this day of February 17, 2017, served a true copy of the foregoing document by electronic mail upon the following:

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