

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

In the Matter of)	
Bresnan Communications, LLC)	WT Docket No. 16-319
Request for Waiver)	

**RURAL WIRELESS ASSOCIATION, INC. REPLY TO OPPOSITION OF T-MOBILE
LICENSE LLC AND BRESNAN COMMUNICATIONS, LLC TO APPLICATION FOR
REVIEW**

The Rural Wireless Association, Inc. (“RWA”), pursuant to Section 1.115 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby replies to the Opposition filed by Bresnan Communications, LLC and T-Mobile License LLC (“Petitioners”)¹ to the Application for Review filed by RWA in the above-referenced proceeding. RWA seeks review of a decision by the Chief of the Mobility Division of the Wireless Telecommunications Bureau (“Bureau”) released December 21, 2016 in the above-captioned proceeding, granting T-Mobile a conditional waiver of Section 27.14(g)(1) of the Commission’s rules, which without such grant would otherwise accelerate – by two years, to June 13, 2017 – the end of license term and related construction requirements for three 700 MHz licenses.² Nothing stated in the Opposition changes the fact that the Waiver Letter stands in conflict with FCC regulation, past precedent, and public policy, and establishes a harmful precedent which should be overturned.

¹ *In the Matter of Bresnan Communications, LLC Request for Waiver, Opposition of T-Mobile License LLC and Bresnan Communications, LLC, WT Docket No. 16-319, filed February 7, 2017 (“Opposition”).*

² Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Steve B. Sharkey, T-Mobile License LLC, DA 16-249, WT Docket No. 16-319, rel. Dec. 21, 2016 (“Waiver Letter”).

In its Application for Review, RWA demonstrated that the waiver granted by the Bureau was inconsistent with the underlying purpose of the Acceleration Rule, which is to prevent the warehousing of spectrum. Because Petitioners could not, and therefore did not attempt to, argue that Bresnan was not warehousing spectrum in contravention of such purpose, they instead argue that the purpose of the rule was not to prevent the warehousing of spectrum.³ This is a curious reversal of thinking by Petitioners since their waiver petition specifically referred to “the underlying purpose of the Acceleration Rule – *preventing spectrum warehousing* and promoting service deployment.”⁴ More importantly, Petitioners fail to understand how preventing warehousing aligns with the other stated purposes of the rule, “to better promote access to spectrum and the provision of service, especially in rural areas.”⁵ Petitioners assert that preventing the warehousing of spectrum is “contrary” to promoting access to spectrum and the provision of service, especially in rural areas, but this is simply not the case.⁶ Preventing the warehousing of spectrum is the means by which the Acceleration Rule promotes access to spectrum and the provision of service, especially in rural areas. By threatening licensees with a shortened license term if they fail to build out their networks, the Acceleration Rule provides incentive for licensees to provide service, especially in rural areas. The shortened license term, in conjunction with the Section 27.14(g)(2) “keep-what-you-serve” rule, also promotes access to spectrum by making unused spectrum available to entities that are willing and able to provide new competitive services in these areas.

³ Opposition at p. 2.

⁴ Bresnan Communications, LLC, FCC Form 601, Attachment A (Request for Waiver), Sept. 30, 2016 at p. 4 (emphasis added).

⁵ Waiver Letter at p. 3.

⁶ Opposition at p. 2.

Petitioners attempt to argue that waiver of the Acceleration Rule “*promotes* the basis for its adoption.”⁷ However, far from promoting the provision of service to rural areas, the waiver *removes* the primary incentive (the threat of a reduced license term) to licensees to build out their networks. If the Commission wishes to *promote* access to spectrum and the provision of service to rural areas, it needs to enforce its existing rules, except in exceptional instances where “unavoidable circumstances beyond the licensee’s control”⁸ prevent it from meeting its buildout requirements (circumstances which the Bureau did not find to exist here).

The Application for Review contained numerous arguments demonstrating that grant of the waiver failed to meet the public interest component of the waiver standard. Petitioners do not even attempt to refute RWA’s arguments that the public interest is harmed by a waiver grant that incents licensees like Bresnan (which sat on its license for eight years without taking any steps to construct) to ignore their buildout obligations.⁹ Instead, Petitioners attempt to refute RWA’s argument that “[t]he service promised by T-Mobile is speculative at best” by citing to T-Mobile’s “past performance and claiming that “the milestones the Bureau imposed on T-Mobile in this case will ensure that the goal of the Bureau’s decision – to ensure that service is delivered

⁷ *Id.* (emphasis in original).

⁸ See *Service Rules for the 6980746, 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 par. 153 (“[W]e do not envision granting waivers or extensions of construction periods except where unavoidable circumstances beyond the licensee’s control delay construction.”). Petitioners argue that because the wording in the Second Report and Order “mirrors” Section 1.946(e)(1) of the Commission’s rules, and that the Bureau stated that it was acting pursuant to that rule, that the waiver grant was not inconsistent with the Second Report and Order. What Petitioners fail to recognize in making this argument is that the fact that the rule and the Second Report and Order contain similar language does not mean that the Commission was relying on Section 1.946(e)(1) when it adopted the Second Report and Order.

⁹ Indeed the Opposition wisely avoids all mention of Bresnan, other than identifying it as a party, as any discussion of Bresnan’s failings as a licensee only draws attention to the undeserving nature of its requested waiver.

to the affected areas – is realized.”¹⁰ Neither T-Mobile’s past performance nor its milestones “ensure” anything other than T-Mobile’s confidence that its reputation will allow it to glide past regulatory obstacles intended to prevent the warehousing of spectrum and Bresnan’s subsequent last minute sale of such spectrum to avoid regulatory penalties. T-Mobile already holds a host of licenses in the subject license areas which it could have used to build out its network to serve these areas,¹¹ and the milestones *intended* to motivate T-Mobile to provide service to the affected areas here by no means “ensure” that this will actually occur with the 700 MHz licenses.

Petitioners disingenuously argue that in the absence of a waiver, affected areas in this case “would lose the opportunity to have a competitive carrier in the marketplace.”¹² This is utterly false and Petitioners know this. First, T-Mobile is sitting on spectrum covering these same license areas that it could have put to use long before attempting to acquire the Bresnan licenses at issue. Second, as Petitioners well know, Section 27.14(g) provides for relicensing of unserved spectrum where buildout requirements have not been met. Affected areas would then have the opportunity to be served by a host of competitive carriers, including T-Mobile if it so chooses. There is no lost opportunity.

Finally, Petitioners wrongly deny that the Waiver Letter establishes precedent.¹³ RWA does not dispute that waivers are decided on their own merits. However, the Commission in evaluating requests for waiver of its rules does look to how similar requests with similar fact patterns have been handled. Indeed, in citing prior waiver decisions in their waiver request and

¹⁰ Opposition at p. 3.

¹¹ The attached license summary from the FCC’s Universal Service Licensing System shows that T-Mobile holds 15 licenses (ranging in size from 35-57 megahertz of spectrum) that overlap different portions of the licenses for which the waiver is sought.

¹² *Id.*

¹³ *Id.* at p. 4, n. 13.

subsequent pleadings in this proceeding, Petitioners clearly recognize that such decisions carry some weight. If the Commission allows the Bureau decision to stand, when a future licensee chooses to refrain from taking any steps to build out its licensed network and shortly before its initial construction benchmark attempts to sell its license to a nationwide carrier which then seeks additional time from the FCC to meet its buildout obligation and is willing to make the same commitments made by T-Mobile, it would be arbitrary and capricious for a future Bureau to ignore the precedent established by the Waiver Letter. More importantly, such precedent, even if not ultimately followed, will still embolden future licensees who may wish to avoid the burdens of FCC buildout requirements.

In January, the Chief of the FCC's Enforcement Bureau emphasized that behavior like Bresnan's is inconsistent with the public interest: "Squatting on spectrum licenses without any meaningful effort to put them to good use in a timely manner is fundamentally inconsistent with the public good. Wireless spectrum is a scarce public resource. We expect every person or company that receives a spectrum license to put it to productive use."¹⁴ The Acceleration Rule was intended to prevent exactly such behavior. To allow and encourage such behavior by permitting the Bureau's decision to stand eviscerates the rule and strongly disservices the public interest. Because the waiver granted to Petitioners is inconsistent with the underlying purpose of the Acceleration Rule and inconsistent with the public interest, the Waiver Letter should be reversed.

¹⁴ *FCC Fines Straight Path \$100 Million to Settle Investigation for Failure to Deploy Wireless Service*, FCC News Release, Jan. 12, 2017 (*quoting* Travis LeBlanc, Chief, FCC Enforcement Bureau).

Respectfully submitted,

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February 17, 2017

T-Mobile Licenses That Overlap Bresnan Licenses

T-Mobile License	Market	Service	License Issue Date
KNLF244	MTA22 – Denver (Johnson County, WY only)	PCS B	6/23/1995
WPTB386	BTA64 – Butte, MT	PCS C	08/22/2001
WPTB387	BTA188 – Helena, MT	PCS C	08/22/2001
KNLG772	BTA300 – Missoula, MT	PCS D	04/28/1997
KNLG790	BTA41 – Billings, MT	PCS E	04/28/1997
KNLG792	BTA53 – Bozeman, MT	PCS E	04/28/1997
KNLG807	BTA171 – Great Falls, MT	PCS E	04/28/1997
WQIZ473	BEA146 – Missoula, MT	Lower 700 MHz A	06/26/2008
WQGA732	REA006 – West	AWS D	11/29/2006
WQGB379	REA006 - West	AWS F	11/29/2006
WQVP402	CMA268 – Billings, MT	AWS G	04/08/2015
WQVP406	CMA297 – Great Falls, MT	AWS G	04/08/2015
WQVP430	CMA530 – Montana 8	AWS G	04/08/2015
WQVP360	BEA145 – Great Falls	AWS H	04/08/2015
WQVP361	BEA146 – Missoula, MT	AWS H	04/08/2015

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 first-class mail, postage paid, on each of the following:

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