

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

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

WT Docket No. 16-402

**OPPOSITION OF THE ALASKA WIRELESS NETWORK TO APPLICATION FOR
REVIEW OF RURAL WIRELESS ASSOCIATION**

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TABLE OF CONTENTS

I. Introduction and Summary	I
II. Background	2
III. The Waiver Satisfied Both of the Alternative Prongs of the Commission’s Waiver Standard.....	II
a. The Underlying Purpose of the Rule Would Have Been Frustrated by Rigid Application of the Geographic Build-Out Requirements	II
b. Due to AWN’s Unique Circumstances, Rigid Application of the Rule Would Have Been Unduly Burdensome and Contrary to the Public Interest	I4
IV. The Good Faith Negotiation Requirement Resolves RWA’s Concerns	17
V. Conclusion	18

I. INTRODUCTION AND SUMMARY

The Alaska Wireless Network, LLC (“AWN”), a wholly owned subsidiary of GCI Communications, Inc. (“GCI”), hereby opposes the Rural Wireless Association, Inc.’s (“RWA’s”) Application for Review of the Wireless Telecommunications Bureau’s well-reasoned decision to grant its requested waiver of the 700 MHz build-out requirements. The waiver approves an ambitious new set of built-out levels that are tailored to the unique circumstances of rural Alaska and are consistent with the purpose of default 700 MHz nationwide build-out requirements. This action will advance the FCC’s important goal of expanding broadband access in American’s single most challenging environment.

The Bureau properly concluded that AWN’s waiver request satisfies each of the two independent bases for a waiver, when analyzed under each basis separately, under the Commission’s rules. First, the Bureau determined that the underlying purpose of the rule would not be served or would be frustrated by its application in this case. AWN demonstrated that in the context of its unusual Alaska-wide license, strict enforcement of the Commission’s build-out requirements would hinder, rather than advance, rural wireless deployment. Instead, the Bureau saw that it could best stimulate rural investment by tailoring build-out requirements to the Alaskan context. By replacing generic build-out levels that were unachievable for a statewide licensee in Alaska context with aggressive but achievable levels, the FCC has not only encouraged AWN to invest in rural areas, but given it the opportunity to do so by replacing impossible build-out requirements that served as barriers to deployment.

Second, the Bureau also found that, in view of the unusual factual circumstances of this case, application of the rules would be unduly burdensome and contrary to the public interest. The Bureau properly concluded that, due to the unique circumstances facing AWN (i.e., the

unreasonable task of extending commercial wireless service across 70% of the entire state of Alaska, including vast unpopulated areas), strict application of the build-out rule would be contrary to the public interest.

Both conclusions are well supported by the record, and each independently justifies the Bureau's decision to grant the waiver. But the Bureau went a step further and required AWN to negotiate in good faith with any third-party that sought to lease AWN's unused spectrum. This extra condition provides an additional guarantee that the waiver will serve the public interest.

II. BACKGROUND

AWN acquired its Lower 700 MHz A-Block license, with the call sign WQJU656, ("the License") in a transaction with T-Mobile License LLC that closed in the summer of 2016. The Commission approved assignment of the license on June 22, 2016.¹ T-Mobile, and previous licensees, had not begun any construction in Alaska, leaving AWN with the impossible task of meeting the Commission's build-out requirements on a highly compressed schedule. The Commission's build-out rules required a Lower 700 MHz licensee to cover 35% of the license area by December 13, 2016² and 70% of that area by June 13, 2019—the end of the license term.³ Therefore, AWN faced the practically impossible task of achieving 35% geographic coverage in the less than six months between the Commission's grant of the transfer of control application and the interim build-out deadline. In addition, if AWN failed to meet the interim 35% coverage

¹ See Application of The Alaska Wireless Network, LLC and T-Mobile License LLC for Consent to Assign License, ULS File No. 0006826907 (filed June 5, 2015; consummated June 22, 2016).

² See 47 C.F.R. § 27.14(g); see also *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd. 15,122, ¶ 55-57 (2013).

³ *Id.*

target, its license term would be shortened by two years and terminate on June 13, 2017—the “acceleration rule.”⁴ AWN would lose its authorization to serve any areas that remained unserved at the end of that license term if, at that time, it had not satisfied the 70% end-of-term coverage requirement—the “keep-what-you-use rule.”⁵

The Commission’s Lower 700 MHz geographic build-out requirements present serious challenges to licensees throughout the United States, especially in rural areas and places with challenging terrain. AWN recognizes that this was precisely the Commission’s goal in adopting them. But as applied in Alaska, to a statewide license, they are simply not achievable, because Alaska presents difficulties that are both greater in degree and different in kind from those anywhere else in the nation.

The first and most obvious challenge is the weather. Although cold weather is hardly unique to Alaska, Alaskan weather is truly extreme. For example, in Alaska, average winter temperatures are typically 15 degrees below freezing. And in northern Alaska, winter temperatures are typically more than 15 degrees below *zero* degrees Fahrenheit, causing much of the state to be covered in a layer of permafrost. These conditions mean that construction is only possible for about three months out of the year, a striking difference from the remainder of the country, and a differentiation that has a direct impact on build-out.

Limited infrastructure compounds the challenge. Most of Alaska, including many regional population centers, is inaccessible by road, and lacks access to the electrical grid. Therefore, tower construction often requires equipment to be brought to the construction site by heavy-lift helicopters, and construction crews must often live in makeshift wilderness camps

⁴ 47 C.F.R. § 27.14(g)(1).

⁵ 47 C.F.R. § 27.14(g)(2).

until construction is complete. Any electrical needs during construction or operation of many towers throughout rural Alaska are met by on-site generators, which run on diesel fuel delivered to the site periodically by helicopter. This makes build-out a very different endeavor than in the remainder of the country.

Moreover, the License covers Basic Economic Area (“BEA”) 171—the entire state of Alaska. Alaska is by far the largest state in the U.S. with a land area of approximately 1.5 million square kilometers—more than twice the area of Texas.⁶ Similarly, BEA171 is the largest BEA in the United States. It is more than ten times larger than the second largest BEA and 40 times larger than the average BEA. This alone makes application of the generic build-out rules inappropriate in this case.

Most of the vast area of BEA171 is entirely uninhabited. Alaska’s population density, 0.46 people per square kilometer, is a fifth of the density of even the second most sparsely populated state, Wyoming.⁷ But even this extremely low population density masks the true emptiness of Alaska: the vast majority of Alaskans live in rural towns and villages—or, in some cases, larger population centers such as Anchorage, Juneau, or Fairbanks. Exceedingly few are interspersed between population centers, as is common in the Continental United States where roads are more plentiful and conditions are less harsh. As a result, BEA171 contains more uninhabited land than *the entire area* of any other BEA.

⁶ *QuickFacts: Alaska*, U.S. CENSUS BUREAU (2010), <https://www.census.gov/quickfacts/fact/table/AK/LND110210#viewtop>; *QuickFacts: Texas*, U.S. CENSUS BUREAU, (2010), <https://www.census.gov/quickfacts/fact/table/TX/>.

⁷ *Resident Population Data*, U.S. CENSUS BUREAU (2010), <http://www.census.gov/2010census/data/apportionment-dens-text.php> (Wyoming has a density of 2.23 people per square kilometer).

Thus, in the case of BEA171, to meet the default interim construction deadline, coverage of 35% of the license area means covering approximately 500,000 square kilometers—greater than the entire area of any other BEA in the country. Meeting the final 70% build-out target would require covering 1.2 *million* square kilometers, the large majority of which would be uninhabited.

AWN concluded that it was simply impracticable to extend wireless coverage to 500,000 and then 1.2 million square kilometers of largely uninhabited area, especially under Alaska's extremely challenging construction conditions. This effort would have diverted resources away from projects to cover rural, but still populated, areas where wireless service would actually be used. Worse still, the prospect of losing access to substantial portions of the license area through the Commission's keep-what-you-use rules threatened to limit AWN's ability to invest in other aspects of its network infrastructure, such as backhaul capacity. These investments would be needed to serve rural areas that AWN might not have been able to reach by the end of its license term, but would have been able to reach soon thereafter if the "acceleration rule" had not been triggered.

Therefore, AWN requested a targeted waiver of the Commission's Lower 700 MHz build-out rules that would replace the default geographic build-out requirements, which are infeasible when applied to the entire state of Alaska, with an aggressive population-based standard. Specifically, under AWN's proposed requirements, it committed to:

- 1) Cover 50% of the population of the entire state of Alaska by December 13, 2016;
- 2) Cover 80% of Alaska's population by June 13, 2019;
- 3) Serve 80% of Alaska's population for an additional five years beyond December 16, 2018;

- 4) Negotiate in good faith with any third party seeking to lease spectrum in unserved areas.⁸

Further, in the event that AWN failed to meet its ultimate 80% population-coverage target, it would lose authorization to serve geographic areas that AWN was not able to serve by June 13, 2017.

The Bureau considered and granted two other waiver requests relating to the lower 700 MHz build-out requirements shortly before considering and granting AWN's waiver request:

- T-Mobile and Bresnan Communications, LLC jointly sought a waiver of the acceleration provision of the build-out rules, such that the final build-out deadline would remain unchanged even though they were not able to meet the interim build-out deadline.⁹ The requested waiver related to three particularly rural Montana and Wyoming markets and, as the applicants explained, was needed to ensure that T-Mobile would be able to close the rural "coverage gap."¹⁰
- AT&T sought a waiver of the Commission's build-out rules for a license to serve a particular Cellular Market Area ("CMA") within Alaska, CMA315, which covers approximately 65% of BEA171. AT&T's requested waiver proposed to replace the Commission's default build-out requirements with an Alaska-appropriate population-

⁸ *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* at 8, WTB Docket No. 16-402 (filed Dec. 7, 2016) ("Waiver Request").

⁹ *See Request for Waiver of Bresnan Communications, LCC*, Attachment to FCC Form 601, WTB Docket No. 16-319 (filed Sept. 30, 2016).

¹⁰ *Id.* at 14-16.

based coverage goal nearly identical to the standard proposed by AWN.¹¹ As AT&T explained:

[G]eographic coverage benchmarks are simply not appropriate for this most remote and sparsely populated region. They frustrate the purpose of the benchmarks, harm licensees that cannot meet the benchmarks despite having diligently built out coverage where consumers need and want service, and harm consumers that rely on the ability of licensees to expand service as demographics change over time.¹²

The Bureau sought comment on both waiver requests and, after reviewing the record that included submissions by RWA,¹³ granted both the T-Mobile/Bresnan and the AT&T waiver requests. In the case of AT&T, the Bureau correctly found that application of the default build-out requirements would be contrary to the underlying purpose of those rules and concluded, independently, wooden application of the rule would be contrary to the public interest “in view of the unique factual challenges of serving Alaska”¹⁴ Likewise, with respect to the T-Mobile/Bresnan waiver request, the Bureau concluded that “the underlying purpose of Section 27.14(g)(1)—‘to better promote access to spectrum and the provision of service, especially in rural areas’—would be frustrated by application of the rule”¹⁵ and granted the waiver request.

¹¹ *Request for Waiver of Lower 700 MHz Band Interim and End-of-Term Geographic Construction Benchmarks for Alaska B-Block Licenses WQIZ358 and WQIZ597*, Petition for Waiver, INBOX-I.3 (filed Aug. 1, 2016).

¹² *Id.* at 10.

¹³ Comments of the Rural Wireless Association Opposing Requested Waiver, WTB Docket No. 16-319 (filed Oct. 26, 2016); Comments of the Rural Wireless Association, Inc., WTB Docket No. 16-335 and WTB Docket No. 16-402 (filed Jan. 3, 2017).

¹⁴ Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Robert Vitanza, AT&T Services, Inc., at 3, WTB Docket No. 16-335 (filed Jan. 18, 2017).

¹⁵ Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Steve B. Sharkey, T-Mobile License LLC, at 3, WTB Docket No. 16-319 (filed Dec. 21, 2016) (internal citations omitted).

The Bureau sought comment on AWN's requested waiver as well. In response, RWA filed comments in opposition, while AT&T¹⁶ and King Street Wireless, L.P.¹⁷ filed comments supporting the request. After deliberating for approximately six months, the Bureau granted AWN's request, finding both that rigid application of the build-out requirements would frustrate the underlying purpose and that a waiver would be in the public interest due to the unique challenges of providing wireless service in Alaska—and, in particular, the unique burdens of serving the entire state.¹⁸

The Bureau agreed with AWN that construction in Alaska is uniquely harsh, observing that:

Alaska is a land of atypical geography, with hundreds of islands, many undeveloped; vast mountain ranges, including America's highest peak, Denali; and extreme weather. Alaska's mean winter temperature is 4° F; in the north, it is -13° F, and certain parts average -20 to -30° F. Travel in Alaska can be extraordinarily difficult: many areas can only be reached by aircraft, and others only by Alaska's famed ice roads in the winter months.

In addition to the unique factors described above, the far-flung distribution of Alaska's population across great expanses of unforgiving lands adds to the complexity of bringing new wireless services to its citizens. Alaska comprises 663,209 square miles and is more than twice the size of Texas, yet it has less than three percent of Texas' population, and a population density of just 1.2 persons per square mile. Additionally, the Commission defines a "rural" county as one with a population density of 100 persons per square mile or less. Twenty-eight of Alaska's 29 boroughs and census areas (the equivalent of counties for statistical purposes) are rural, and 15 have a population density of less than half a person per square mile.¹⁹

¹⁶ Comments of AT&T, WTB Docket No. 16-402 (filed Jan. 3, 2017).

¹⁷ Reply Comments of King Street Wireless, L.P., WTB Docket No. 16-402 (filed Jan. 13, 2017).

¹⁸ Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Cindy Hall, The Alaska Wireless Network, LLC, WTB Docket No. 16-402 (filed June 6, 2017) ("Waiver Letter").

¹⁹ *Id.* at 5-6.

In addition, the Bureau noted that, in the 700 MHz proceeding, the Commission had concluded that population-based build-out requirements were more appropriate for larger license areas, such as Regional Economic Area Groupings (“REAGs”). But because BEAs are typically much smaller than REAGs, the Commission generally decided to use geographic build-out targets for BEA license areas. BEA171, however, is unique among BEAs because it is larger than 9 of the 12 REAGs in the United States, suggesting that a population-based benchmark would be appropriate for BEA171 as well.²⁰

The Bureau specifically considered and rejected RWA’s arguments in opposition to the waiver request. RWA argued that AWN’s proposed 80% population-coverage requirement would frustrate the purposes of the build-out rule by allowing AWN to serve only the most populated portions of the license area. But the Bureau correctly concluded that AWN could not possibly meet its 80% coverage obligation without serving rural areas, as less than half of Alaskans live in urban centers.²¹ As the Bureau explained, “AWN would have to serve all 149 incorporated cities in Alaska—90 of which have less than 500 persons (and 21 of which have less than 100 persons)—to reach 68.8% of the State’s population.”²² Moreover, the Bureau observed that AWN has separately committed to bringing new LTE service to more than 100,000 Alaskans living in rural areas, and had already begun serving sparsely served areas such as Bethel Census Area, with a population density of just 0.4 people per square mile.²³ Finally, the Bureau pointed out that AWN’s commitments would require it to cover a larger portion of the population

²⁰ *Id.* at 6.

²¹ *Id.* at 6-7.

²² *Id.*

²³ *Id.* at 7.

than the existing population-based build-out requirements in any other commercial wireless service, including the Lower 700 MHz E and C blocks.

The Bureau also considered and rejected RWA's claim that the waiver would promote spectrum warehousing. The Bureau pointed out that this argument had already been disproven by AWN's deployment of new 700 MHz coverage or ongoing projects to do so.²⁴ AWN has worked hard in the months since it filed its waiver request in pursuit of the aggressive targets. As AWN reported in December of 2016, it has successfully met its 50% population coverage obligation, and is pushing to meet its final 80% coverage milestone. It has completed projects in Anchorage, Eagle River, the Matanuska-Susitna Valley, Kenai Soldotna, the Kenia Peninsula, Prudhoe Bay/Deadhorse, Fairbanks, Juneau, Kodiak, Ketchikan, Girdwood, Wrangell, Dutch Harbor, Nome, Sitka, Barrow and Shishmaref, and begun new ones to further expand coverage in Barrow, Unalaska/Dutch Harbor, and Shishmaref.

Much of the construction detailed in AWN's December 2016 report would never have occurred had the waiver been denied and AWN's license area limited to what it was able to cover by June 13, 2017, under the "acceleration rule." Had that occurred, the Commission would, at best, currently be in the process of reviewing applications to serve relinquished portions of spectrum—assuming that it received any applications to do so. Without any interest in leasing the spectrum for such areas expressed to AWN or its predecessor licensees during the license term, it's hard to imagine who, including RWA members, would submit such applications. And, these new applicants, as AWN has explained, would be less likely than AWN to actually provide service throughout the

²⁴ *Id.* at 8.

most rural areas of Alaska due to the significant costs of doing so, and their inability to economize on the non-spectrum costs of operating a rural wireless network (such as backhaul, which is extremely challenging in Alaska) by amortizing them across numerous service areas and subsidizing them with revenue from less rural areas.

III. THE WAIVER SATISFIED BOTH OF THE ALTERNATIVE PRONGS OF THE COMMISSION’S WAIVER STANDARD

Under the Commission’s rules, waiver is appropriate if either:

- (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 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.²⁵

The waiver satisfied both of these alternative standards.

a. The Underlying Purpose of the Rule Would Have Been Frustrated by Rigid Application of the Geographic Build-Out Requirements

As the Bureau correctly noted, the purpose of the Commission’s Lower 700 MHz build-out rules is “to better promote access to spectrum and the provision of service, especially in rural areas.”²⁶ AWN’s waiver satisfied this requirement because it continues to impose direct and aggressive rural coverage obligations while better facilitating rural investment. The Bureau correctly rejected RWA’s argument on these points.²⁷

²⁵ 47 C.F.R. § 1.925(b)(3).

²⁶ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, Second Report and Order, 22 FCC Rcd. 15289 ¶ 153 (“Second Report and Order”).

²⁷ Waiver Letter at 6-7.

As AWN and the Bureau have explained, the strict population-based coverage requirements imposed as a condition of the waiver require significant rural deployment. AWN remains obligated to cover 80% of the population of Alaska by June 13, 2019. If it does not, it loses its authorization to serve any area it had not covered by June 13, 2017—potentially squandering two years’ worth of investment. And as explained above, less than half of Alaskans live in urban areas. Thus, it is a matter of simple arithmetic that, in order to serve 80% of Alaskans, AWN will be obligated by the terms imposed in the grant of its waiver request to cover a large portion of the state’s rural population.

In the absence of the waiver, however, AWN and other operators would likely cover far fewer rural Alaskans. In AWN’s case, it would have been unable to invest in the wireless infrastructure needed to serve any area that it was not certain to be able to serve by June 13, 2017 absent a waiver, even if coverage would have been possible soon thereafter. In addition to radio deployments themselves, building a functional wireless network requires backhaul, retail capacity, billing systems, staff, and other associated expenses. A carrier must scale these and other capabilities to match future network deployments. However, due to the nature of the Commission’s keep-what-you-use rule in the Lower 700 MHz band, other operators would have been able to apply for and claim any spectrum that AWN was not able to use by June 13, 2017, barring AWN from reapplying to serve those areas.²⁸ Any network investments AWN might have made to support these areas would have been stranded. Thus, any geographic area that AWN was not confident it would be able to serve by the June 13 deadline could not rationally be included in its near-term network plan. Plainly, this outcome harms, rather than helps, deployment to rural consumers.

²⁸ 47 C.F.R. § 27.14(j)(1).

Moreover, the spectrum reclaimed by the Commission under the keep-what-you-use rules in Alaska will be overwhelmingly rural. Thus, were the Commission to seek new applications to serve spectrum relinquished under the keep-what-you-use rule, prospective licensees would have no possibility to simultaneously acquire more profitable urban spectrum with which to finance construction in the less profitable rural areas. Thus, this reclaimed rural spectrum, standing alone and separated from any urban areas, will present a far less attractive investment for other potential operators than it does currently for AWN, under its waiver. While other operators would struggle to finance construction, and deploy the necessarily ancillary infrastructure to bring a network into operation, AWN has both in place already, and is currently proceeding rapidly to expand coverage in some of the most remote parts of Alaska and the United States.

Indeed, although RWA accuses AWN of warehousing spectrum, the Bureau found otherwise.²⁹ Requiring AWN to relinquish unused spectrum is far more likely to promote speculation. A new licensee would find it very challenging to finance the construction of a new network exclusively serving the most rural parts of Alaska, so instead they might instead seek to simply resell that spectrum back to AWN, or a competitor. This outcome would merely delay deployments and divert funds to speculators that could have been used to expand rural coverage, all with no offsetting public interest benefit.

This analysis, however, may not apply outside of Alaska. In areas with more favorable construction conditions and denser populations (even if still extremely rural by the standards of the lower 48 states), rigid application of the geographic build-out rule would likely serve as an achievable incentive for licensees to actually achieve the 35 and 70% geographic build-out goals the Commission has set for them. But, in Alaska, the rule is ineffective because conditions in

²⁹ Waiver Letter at 8.

Alaska make it economically impossible to meet these targets for a statewide licensee such as AWN, or a licensee such as AT&T whose license covers an extremely large area covering the most remote portions of the state. Instead, it primarily serves to restrict investment in rural areas by increasing risk and creating new barriers to investment by isolating rural license areas from urban ones, frustrating the underlying purpose of the rule.

b. Due to AWN's Unique Circumstances, Rigid Application of the Rule Would Have Been Unduly Burdensome and Contrary to the Public Interest

The Bureau found that AWN faced unique challenges due to the harsh Alaskan conditions, extremely large license area, and low population densities. It offered a thorough and cogent explanation of the numerous ways in which Alaskan conditions are uniquely challenging.³⁰ Nonetheless, RWA contends that the Bureau's conclusion was "totally unsupported by the record"³¹ and claims that RWA members serve areas that present "similar challenges."³²

AWN does not doubt that RWA members work diligently to provide service under challenging conditions that may, in some respects, be "similar" to those AWN faced in satisfying the build-out requirements. But RWA's contention that AWN's challenges were not unique, and were "different only in degree, not in kind" from those faced by other rural providers suggests that RWA is simply not familiar with, or chooses to ignore, the full scope of the challenges associated with constructing a *statewide* 700 MHz commercial wireless network in Alaska. Contrary to RWA's claims, AWN submits that there is, in fact, no other U.S. carrier that the

³⁰ Waiver Letter at 5-6.

³¹ *Id.* at 8.

³² *Id.* at 7.

Commission’s rules would require to deploy 700 MHz coverage across 1.2 million square kilometers of mostly unpopulated land, with average temperatures often far below zero degrees Fahrenheit, with little access to roads and electricity, all within a three-month annual construction season. Certainly other carriers may sometimes face challenges that in some way resemble some of these extremely challenging constraints, but the combination of each of these factors plainly constitutes a unique circumstance for the purposes of 1.925(b)(3)(ii). Moreover, the FCC specifically rejected the RWA’s claims on this point in granting the waiver.³³

RWA also misses the mark when it suggests that Awn has not worked “diligently” to meet the Commission’s deadline.³⁴ On the contrary, Awn has worked tirelessly to extend 700 MHz coverage ever since it acquired the License in the summer of 2016. Indeed, the Waiver Letter recognizes the long list of rural communities that Awn now serves, and the projects now underway, reflecting Awn’s build-out progress. Nearly all of these investments occurred in the few short months when construction was possible since Awn first gained control of the license. Far from suggesting a lack of diligence, this demonstrates the feverish pace of deployment that began as soon as Awn was able to begin construction.

RWA also suggests that Awn should, in effect, be punished for the previous licensee’s failure to make progress toward the build-out requirements. But such a policy would constitute yet another impediment to rural deployment. To punish a secondary-market transferee under these circumstances would, in effect, freeze the secondary market for such licenses, disincentivizing licensees from transferring the licenses, in the event they are unable to build-out, to licensees with the ability and desire to serve rural areas.

³³ *Id.* at 3-4.

³⁴ *Id.* at 8.

Finally, RWA contends that the Commission’s initial failure to exempt Alaska from its Lower 700 MHz build-out requirements also somehow compelled the Bureau to deny AWN’s waiver request. But the Commission should reject this line of reasoning which would entirely undermine the Commission’s waiver standard. If the Commission were to take the position that a waiver is inappropriate whenever the Commission had not already chosen to create an exemption in the rules, it would never grant another waiver. Such a position would obviate the need for a waiver in every case where the Commission might otherwise have granted one. Not only would this outcome be contrary to the important public interest benefits associated with the availability of waivers generally, it would also be at odds with the waiver standard articulated in Section 1.925(b)(3).

Moreover, RWA fails to acknowledge that the Commission *did* consider the relative merits of population versus geographic build-out requirements for very large license areas and concluded that, for the largest areas—REAGs—a population-based requirement “is appropriate for licensees with large geographic areas to allow for roll out of advanced services on a nationwide or regional basis.”³⁵ As the Bureau notes, AWN’s license area is coextensive with REAG7, and larger than the large majority of REAGs in the United States. This strongly suggests that Commission policy is aligned with the Bureau’s decision to apply a strict population-based build-out requirement in this case.

Under these unique circumstances, the waiver was plainly in the public interest for the reasons explained above—it both facilitates expanded investment in rural coverage and directly compels significant rural deployments before the end of the license term.³⁶

³⁵ Second Report and Order at ¶ 164.

³⁶ See *supra* II.a.

IV. THE GOOD FAITH NEGOTIATION REQUIREMENT RESOLVES RWA’S CONCERNS

As a final measure to ensure that the waiver would promote expanded coverage, the Bureau required AWN to “negotiate in good faith with any third party seeking to acquire or lease spectrum in a geographic area of BEA1[71] not served by AWN.”³⁷ RWA speculates that this requirement will be ineffective in providing other prospective licensees with meaningful access to unserved rural spectrum. But RWA fails to acknowledge that the requirement to negotiate in good faith is, in fact, an effective tool that the Commission and Congress have employed in numerous contexts to great effect.³⁸

Moreover, AWN has proposed specific conduct that the good-faith negotiation rule would mandate: “Good faith negotiations would include, among other things and by way of example only, terms providing for reasonable market-based lease rates, term periods, and build requirements similar to those proposed in this docket and in Commission Rule Section 27.14(g).”³⁹ Thus, there is no risk that AWN would seek exorbitant fees, prohibitive conditions, or other restrictions to prevent a third party from successfully negotiating to lease spectrum. The requirement to negotiate in good faith includes a powerful enforcement mechanism: if AWN fails to negotiate in good faith to lease spectrum in a given area, the Bureau’s order provides that AWN’s authorization will terminate *automatically* in that area and become available for reassignment.⁴⁰ Therefore, this condition and its enforcement mechanism ensure precisely the

³⁷ Waiver Letter at 9.

³⁸ See, e.g., 47 C.F.R. § 1.1420(g)(4) (pole attachment); 47 U.S.C. § 271 (intercarrier compensation); 47 C.F.R. 51.301 (interconnection); 47 C.F.R. § 27.1216 (negotiations between BRS and grandfathered EBS licensees); 47 C.F.R. § 101.73 (relocation of fixed service and mobile satellite operators from the AWS bands); 47 C.F.R. § 76.65 (retransmission consent).

³⁹ Waiver Request at 8-9.

⁴⁰ Waiver Letter at 9.

outcome RWA seeks: if AWN fails to provide service in a particular part of rural Alaska, any RWA member will be able to negotiate with AWN to lease that spectrum and offer service of its own.

V. CONCLUSION

Contrary to RWA's contentions, the Bureau carefully weighed the Commission's policies and the public interest in reaching its decision to grant AWN's waiver of the Lower 700 MHz build-out rules. It correctly concluded that strict application of the keep-what-you-use rule, under circumstances that made compliance a practical impossibility, would undermine rural investment, contrary to the public interest and the policy underlying the build-out rule. Similarly, the Bureau was plainly correct that AWN's uniquely demanding situation represented the type of "specific case of hardship" for which the Commission had envisioned as suitable grounds for a waiver. RWA's argument to the contrary, that AWN did not work diligently to expand coverage, and that the circumstances it faces are not unique among 700 MHz licensees, is flatly incorrect and was already rejected by the Bureau in granting AWN's waiver request.

Meanwhile, the waiver imposes strict performance conditions that require AWN to serve a larger portion of the population than licensees in the 700 MHz E or C blocks, or in any other commercial wireless service. This necessarily includes large numbers of Alaskans living in rural areas. Accordingly, the Bureau's decision was well justified, and in the public interest.

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CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of July, 2017, a copy of the foregoing pleading was served via first class mail upon:

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