Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC

In the Matter of	**)**
	)
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

AT&T Services, Inc.

Robert Vitanza
Gary L. Phillips
David Lawson

208 S. Akard Street
Rm 2914
Dallas, Texas 75202
(214) 757-3357 (Phone)
(214) 746-2212 (Fax)

August 1, 2016

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC

In the Matter of	**)**
	)
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

AT&T Services, Inc., on behalf of its subsidiary AT&T Mobility Spectrum LLC, (collectively, "AT&T"), pursuant to Federal Communications Commission ("Commission") Rule Section 1.925, requests a waiver of the geographic coverage construction benchmarks specified in Commission Rule Sections 1.947(b) and (c) and 27.14(g) for WQIZ358 and WQIZ597, lower 700 MHz B-block licenses in Alaska.

I. INTRODUCTION AND SUMMARY

"Alaska is different." With those words, Commissioner O'Reilly summed up the challenges in Alaska.[1] AT&T concurs in his assessment that "Alaska is unique compared to the 'lower 48' states."[2] AT&T has confronted the unique combination of market and environmental conditions to provide service to Alaskans. Terrain, climate, demographics, and other environmental factors are constant challenges in Alaska. Weather alone shrinks the construction season in Alaska to a fraction of what it is in the lower 48 states. More importantly, Alaska's population is the least dense of all 52 United States and Territories. These factors provide unique challenges for wireless licensees.

[1] FCC Blog of Commissioner Michael O'Reilly (Sept. 5, 2014), available at https://www.fcc.gov/news-events/blog/2014/09/05/alaska-lessons-learned.

[2] *Id.*

Among other licenses, AT&T holds four lower 700 MHz B-Block licenses to provide service in Alaska—WQIZ358 (CMA315 Alaska 1-Wade Hampton), WQIZ597 (CMA316 Alaska 2-Bethel), WQIZ598 (CMA317 Alaska 3-Haines), and WQJU565 (CMA187 Anchorage, AK). AT&T will reach the 35% interim geographic coverage construction benchmark for CMA317[3] and CMA187 before the December 13, 2016 deadline. Although AT&T expects to provide coverage and offer service to more than 70% of the population of CMA315 and CMA316 by the December 13, 2016 interim construction deadline, CMA315 will not, and CMA316 may not, meet the 35% geographic coverage benchmark. Moreover, neither CMA is expected to reach the 70% end-of-term geographic coverage benchmark. CMA315 and CMA316 cover the interior and far northern reaches of Alaska and are challenging to serve due to market and environmental conditions. Thus, AT&T seeks a waiver of the Commission's interim *and* end-of-term geographic coverage construction benchmarks for both licenses WQIZ358 (CMA315) and WQIZ597 (CMA316).

Rigid adherence to the geographic coverage benchmarks in these remotest of regions in Alaska is counterproductive, would frustrate the policy behind the coverage benchmarks, and in fact, does not serve the public interest. The benchmarks were designed to encourage providers to offer service to consumers who need it and AT&T has met that goal in CMA315 and CMA316. Applying the geographic coverage benchmarks would reduce the license term by two years and cause the removal of unserved portions of the CMA from the license when its term expires in 2017—preventing AT&T from expanding service to new, rural communities in Alaska. This result is not in the public interest, as other providers would not likely claim the unserved areas and provide service in these remotest and sparsely populated areas. Incumbent licensees are the

[3] AT&T has already filed a 47% build showing in CMA317.

most likely to make those types of economic investments, building out as population centers emerge.

To ensure that the goals of the coverage benchmarks are met, AT&T proposes replacing the geographic coverage benchmarks with 40% interim and 70% end-of-term population-based benchmarks for CMA315 and CMA316, requiring licensees to provide service where customers need it and will actually use it rather than over isolated areas of Alaska. This waiver would acknowledge the unique conditions in Alaska, advance the expansion of service in rural areas, avoid frustrating the purpose of the Commission's construction benchmarks, and avoid an otherwise inequitable result.

II. DISCUSSION

AT&T holds Commission licenses WQIZ358 and WQIZ597 to provide 700 MHz B-Block wireless service over the remotest and northernmost areas of the United States, covering CMA315 (Alaska 1-Wade Hampton) and CMA316 (Alaska 2-Bethel). The Commission's construction benchmarks for these licenses require AT&T to provide 35% geographic coverage by December 13, 2016 and 70% geographic coverage at the end of the license term -- currently June 13, 2019.[4] A licensee that fails to timely meet the interim 35% geographic coverage benchmark will suffer an automatic two year reduction in the license term and a licensee that fails to meet the end-of-term 70% geographic coverage benchmark will lose the ability to serve the unserved area, which the Commission can reassign.[5]

AT&T expects to provide coverage and offer service to more than 70% of the population within CMA315 by the December 13, 2016 interim benchmark deadline, but that coverage

[4] 47 C.F.R. §27.14(g).

[5] *Id.*

translates to less than 13% of the licensed geographic area (after removing uncovered government lands). Though AT&T expects to meet the interim 35% geographic coverage for CMA316 (covering over 80% of the population of that CMA), unexpected delays could delay AT&T's ability to do so. The sheer size of CMA315 and CMA316, the lack of population density outside of the few towns and communities, and the remoteness of the Alaskan interior all contribute to this result. To avoid a reduction in the license term and preserve authorization to serve the as-yet unserved portions of these CMAs, AT&T seeks a waiver of the geographic coverage area benchmarks applicable to CMA315 and CMA316. Instead, AT&T proposes subjecting these CMAs to population-based benchmarks similar to those in place for other Part 27 licenses.

Commission Rule Section 1.925 allows for the grant of waiver upon a showing that:

- 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

- 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.[6]

The Commission has recognized previously that it would consider waiving construction benchmarks on a case-by-case basis where the circumstances are unique, such as where compliance is difficult due to low population density, and where a waiver would serve the public interest.[7] In fact, the Commission has previously granted a waiver and alternative build

[6] 47 C.F.R. §1.925(b)(3).

[7] *See* Amendment of the Commission's Rules To Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994) (*PCS MO&O*), *citing WAIT Radio v FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

requirements for Alaska due to the unique challenges of providing service in remote, rural areas.[8] In this case, AT&T likewise makes a showing that the unique challenges of serving CMA315 and CMA316 justify grant of a waiver of the geographic coverage benchmarks.

A. Alaska is a Unique Market and Environment.

Providing wireless service in Alaska is uniquely challenging. Commissioner O'Reilly perhaps summed it up best:

> Vast mountains and rivers slice the state into pieces, leaving its many communities and villages isolated and without the transportation options we take for granted in the contiguous states. I flew for hours over the southwestern portion of the state without spotting a single road. That means supplies must be shipped in by airplanes, helicopters, boats, or barges, and these services may be available only by charter making deliveries both infrequent and expensive. And then there are the weather challenges. For up to nine months out of a year, Alaskans can experience what reminds me of some of the worst weather days in my hometown of Buffalo, resulting in substantially shortened construction and repair seasons. These factors, combined with a population distribution heavily skewed towards Anchorage, make serving the sparsely populated rural and isolated areas very complicated.[9]

Indeed, Alaska is isolated from the contiguous lower 48 states. It ranks 48th in population, with approximately 737,000 residents,[10] yet it is by far the largest State by area in the nation. CMA315 alone, covering much of the Arctic Circle, covers 341,922 square miles, an area that is 30% larger than Texas[11] and comprises approximately 60% of Alaska's total land

[8] Request for Waiver and Extension of Time to Construct Ten Cellular Locations – KNKR318, DA-07-3807, 22 FCC Rcd 16273 (WTB 2007).

[9] *Supra* note 1.

[10] *See* U.S. Census Bureau QuickFacts, at http://www.census.gov/quickfacts/map/PST045214/02 (last accessed on June 2, 2016).

[11] Texas covers 261,232 square miles. *See* http://www.census.gov/quickfacts/table/LND110210/48,00 (last accessed on June 2, 2016).

area (570,641 square miles).[12] CMA316's land area covers 176,140 square miles.[13] Alaska's small population and immense size result in by far the lowest population density in the nation, at 1.2 persons per square mile (five times lower than the next ranked State).[14] The population density of CMA315 and CMA316 are lower still at .42 and 1.1 persons per square mile, respectively.[15] Moreover climate and geography hamper infrastructure deployment and operation, shortening the construction season by months compared to the lower 48 States. These factors are unique and warrant consideration in determining whether AT&T has met its obligation to adequately use the spectrum to serve customers.

B. Geographic Coverage Benchmarks are Unsuitable for CMA315 and CMA316.

The same factors that make Alaska challenging to serve also make reliable mobile service important to the safety and livelihoods of Alaskans every day. Applying geographic coverage benchmarks to CMA315 and CMA316 would adversely impact that reliability by impeding the expansion of wireless service to new communities in Alaska, as it would cause AT&T to lose its authority next year to expand into previously unserved portions of the CMAs due to an inability to meet the 70% end of term geographic coverage benchmark. Unlike typical population expansion patterns in the lower 48 States, communities in Alaska often arise in pockets far from other communities and population centers. Allowing licensees the flexibility to easily serve

[12] Alaska: 2010, Population and Housing Unit Counts, 2010 Census of Population and Housing, at 7 (June 2012), available at https://www.census.gov/prod/cen2010/cph-2-1.pdf.

[13] *Id.*

[14] *Id.*

[15] *Id.*

those new communities is more effective than making previously unserved areas available to new entrants, which are not likely to invest in serving such sparse territory.

Just two years ago, the Commission faced a similar issue in Cellular Rulemaking Docket No. 12-40, when it considered whether to retain the Phase II unserved area process. In that docket, incumbent Cellular licensees serving Alaska -- GCI, Arctic Slope, and Copper Valley -- supported retention of as-needed site-based access to unserved area, emphasizing that its abandonment "would limit investment in rural Alaska and hobble multiple providers from obtaining licenses targeted to niche services and business plans, *e.g.*, serving scientific research facilities and petroleum extraction sites."[16] The Commission ultimately retained the Cellular unserved area rules, allowing incumbent licensees in Alaska to continue expanding service to new communities. AT&T seeks to retain similar rights for CMA315 and CMA316. Its demonstrated population coverage in those CMAs and its geographic coverage in CMA317 and CMA187 evidence AT&T's commitment and ability to meet the needs of rural Alaskans.

Reassignment would also be ineffective. AT&T covers most of the population of CMA315 and CMA316. Both common sense and the industry's experience with Alaska licenses in the Cellular service predict that in the absence of population to serve, carriers will not claim unserved portions of those CMAs in the lower 700 MHz service. In 2012, Commission staff examined the geographic coverage of Part 22 Cellular licensees within each CMA. Even though licensees had been providing Cellular service in CMA315 and CMA316 for approximately 25 years, the vast majority of those CMAs still consisted of unserved area, as evidenced by aggregated maps of those CMAs created by Commission staff and reproduced in Exhibit 1

[16] Amendment of Parts 1 and 22 of the Commission's Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area, *Report & Order*, WT Docket No. 12-40, 29 FCC Rcd 14100, 14107 (2014) ("*Cellular Report and Order*").

attached hereto.[17] And the Commission itself recognized that even after 25 years "[i]t is likely to be many years before the Alaskan CMA Blocks are substantially built out."[18] The reason is simple. These unserved areas are remote with few or no roads or communities to speak of, and hence, no demand or need for service. For these reasons, it is counterproductive to apply geographic coverage benchmarks to CMA315 and CMA316.

C. CMA315 and CMA316 are Suitable for Population-based Benchmarks.

The Commission adopted the 700 MHz B-Block geographic coverage benchmarks to "accomplish several important policy objectives," including ensuring that "licensees put this spectrum to use throughout the course of their license terms and *serve the majority of users* in their license areas."[19] The Commission has recognized that in some markets, that can be accomplished through a population-based benchmark.

In 2014, the Commission applied population benchmarks to the AWS-3 band to "ensure that licensees provide wireless broadband services where customers actually will use them and need them."[20] In that docket, the Commission rejected arguments that build-out requirements must be geography-based to ensure the provision of service in less densely populated areas and

---

[17] *See* Maps of CGSAs for Each Market: A Block CMAs 176-351, page 140, available at http://wireless.fcc.gov/services/cellular/A_Block_PDF_Map_CMA176-CMA351.pdf; Maps of CGSAs for Each Market: B Block CMAs 176-351, page 140, available at http://wireless.fcc.gov/services/cellular/B_Block_PDF_Map_CMA176-CMA351.pdf

[18] 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*, WT Docket No. 12-40, 27 FCC Rcd 1745, 1762 (2012).

[19] 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, 22 FCC Rcd 15289, 15348 (2007) ("*Second Report and Order")*(emphasis added).

[20] Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, *Report and Order*, GN Docket No. 13-185, 29 FCC Rcd 4610, 4660 (2014) (quoting Comments of Verizon).

concluded that a population-based benchmark applied to CMA license areas "strikes an appropriate balance between providing flexibility to AWS-3 band licensees to deploy their networks in a cost-effective manner and assertively promoting deployment of service to less densely populated areas."[21] Similarly, applying population benchmarks to CMA315 and CMA316 meets the Commission's policy objectives and still promotes the deployment of 700 MHz B-Block services to less densely populated areas.

In its 700 MHz Order, the Commission explained that licensees should take the benchmarks "seriously" and provide service with "utmost diligence" and thus it did not envision granting waivers.[22] By any reasonable measure, AT&T has taken the benchmarks seriously and diligently provides service where Alaskans want and need it. To ensure that AT&T continues to do so, AT&T proposes subjecting CMA315 and CMA316 to population benchmarks that are consistent with those imposed for the lower 700 MHz E-block — a 40% interim benchmark and 70% end-of-term benchmark. As the Commission recognized in the AWS-3 docket, a licensee's diligence to serve consumers in its market area can be effectively judged via a population-based benchmark. AT&T will cover over 70% of the population in CMA315 and CMA316,[23] exceeding both the 40% alternative interim population benchmark and the 70% alternative end-of-term population benchmark applicable to the 700 MHz E Block.

In Docket 12-40, Cellular incumbents explained how the ability to expand existing service within a CMA is "a powerful tool for bringing wireless service to rural America" by allowing them to serve specific communities, such as scientific research facilities and petroleum

[21] *Id.* at 4660-61.

[22] *Second Report and Order* at note 18.

[23] If unexpected delays occur in the 700 MHz B-Block deployment in CMA316, coverage could fall short of 81% of the population.

extraction sites.[24] Applying these population benchmarks to CMA315 and CMA316 would be in the public interest by allowing AT&T to expand service to rural communities and facilities in much the same manner as its Cellular competitors, yet ensure that AT&T is putting the lower 700 MHz B-Block to use and adequately serving consumers.

III. CONCLUSION

It is well-established that Alaska is unique, challenging the wireless licensees that serve Alaskans. AT&T nevertheless expects to provide service to over 70% of the population in CMA315 and CMA316 — effectively meeting the stated objective of the Commission's lower 700 MHz construction benchmarks. Yet, those geographic 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 have 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. Grant of the waiver sought by AT&T to replace geographic coverage benchmarks with population-based benchmarks will recognize the unique dynamics of Alaska and advance the public interest by allowing AT&T, at its expected levels of coverage, to continue serving newly formed rural communities in CMA315 and CMA316.

[24] *Cellular Report & Order* at 14107.

August1, 2016

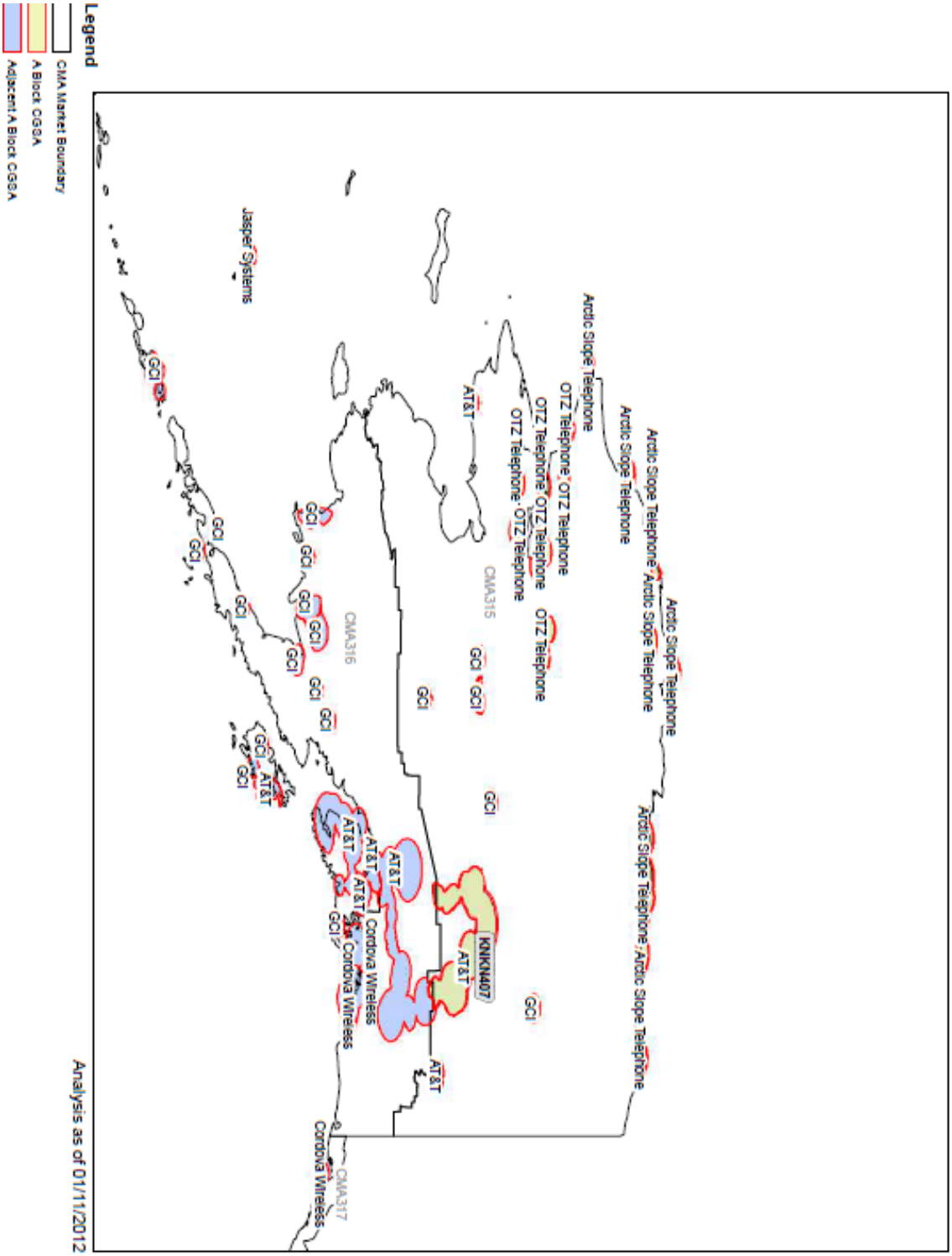
Respectfully submitted,

_____

Robert Vitanza
Gary L. Phillips
David Lawson

AT&T Services, Inc.
208 S. Akard St
Rm 2914
Dallas, TX 75002
(214) 757-3357 (Phone)
(214) 746-2213 (Fax)
robert.vitanza@att.com

Exhibit 1
CMA315A and CMA316A



CMA315B and CMA316B