

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
T-Mobile License LLC, Request for Waiver of Section 27.14(g)(1)	)	WT Docket No. 16-319
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: December 12, 2017**

**Released: December 13, 2017**

By the Commission:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order*, we deny an application for review, filed by the Rural Wireless Association, Inc. (RWA),<sup>1</sup> of a 2016 Wireless Telecommunications Bureau (Bureau) Mobility Division (Division) *Order*.<sup>2</sup> In that *Order*, the Division granted to T-Mobile License LLC (T-Mobile) a conditional waiver of Section 27.14(g)(1) of the Commission's rules,<sup>3</sup> which absent the waiver would have accelerated—by two years, to June 13, 2017—the end of the license term and related 70 percent geographic-area construction requirement for three 700 MHz licenses. In light of the combination of factors in this case set forth below, we find that RWA has failed to demonstrate that the *Order* warrants review under Section 1.115 of the Commission's rules.<sup>4</sup> We affirm and expand on the Division's finding that strict application of Section 27.14(g)(1) here would frustrate the rule's underlying purpose and that grant of the conditional waiver will serve the public interest, including by ensuring rapid introduction of new competitive wireless broadband services in Montana and Wyoming, especially in often underserved Tribal and rural areas.

2. Although we deny RWA's Application for Review, we grant its separate request that T-Mobile be required to file construction notifications, as described below, demonstrating its geographic coverage for each license area as of June 13, 2017.<sup>5</sup> As explained further below, if T-Mobile fails to satisfy a performance condition under the waiver, it would only retain the geographic portion of the relevant license area it served as of June 13, 2017 (the end of term for each of the three licenses absent the

<sup>1</sup> Application for Review of the Rural Wireless Association, Inc., WT Docket No. 16-319 (filed Jan. 23, 2017) (Application for Review). RWA is a trade association representing rural wireless carriers that each serve fewer than 100,000 subscribers. See Rural Wireless Association, About Us, <http://ruralwireless.org/about-rwa/>.

<sup>2</sup> *T-Mobile License LLC Request for Waiver of Section 27.14(g)(1)*, WT Docket No. 16-319, Letter Order, 31 FCC Rcd 13379 (WTB Mobility Div. 2016) (*T-Mobile Waiver Order*).

<sup>3</sup> 47 CFR § 27.14(g)(1).

<sup>4</sup> 47 CFR § 1.115.

<sup>5</sup> See *Ex Parte* Letter from Marjorie Spivak, Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed July 17, 2017) (RWA Clarification Request). RWA directed this request to the Bureau during the pendency of its Application for Review. See *id.* at 2. RWA reiterated this request in a filing on August 4, 2017. See *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319, at 2 (filed Aug. 4, 2017) (RWA August 2017 *Ex Parte*). The Division referred this request to the Commission for action. See 47 CFR § 1.106(a)(1).

waiver). We are requiring T-Mobile to file the construction notifications—within 30 days of release of this *Memorandum Opinion and Order*—to ensure that interested parties and staff are able to ascertain which portions of each license area T-Mobile would retain should it not meet a performance condition.

## II. BACKGROUND

3. *Section 27.14(g)(1)*. In the *700 MHz Second Report and Order*, the Commission adopted interim and end-of-license term construction benchmarks for certain 700 MHz band licensees.<sup>6</sup> The Commission required Lower 700 MHz band A and B Block licensees to provide signal coverage and offer service over at least 35 percent of their license area by June 13, 2013,<sup>7</sup> later extended to December 13, 2016<sup>8</sup> (Interim Construction Requirement), and to provide signal coverage and offer service over at least 70 percent of that area by the end of their initial 10-year license term, here June 13, 2019 (Final Construction Requirement).<sup>9</sup> Section 27.14(g)(1) provides that, if a licensee does not satisfy the Interim Construction Requirement of 35 percent, its license term will be reduced by two years, thereby requiring it to meet the Final Construction Requirement of 70 percent two years sooner.<sup>10</sup> Further, if a licensee does not meet its Final Construction Requirement (whether or not accelerated) as required by Section 27.14(g)(1), it will be subject to a “keep-what-you-serve” rule under Section 27.14(g)(2), whereby its “authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission.”<sup>11</sup>

4. *T-Mobile’s Acquisition of the Licenses*. On September 27, 2016, Bresnan Communications, LLC (Bresnan) filed an application to assign three 700 MHz licenses (the Licenses, and each individually, a License) to T-Mobile.<sup>12</sup> The assignment application appeared on public notice on October 5, 2016.<sup>13</sup> No party opposed the application. On December 5, 2016, the Bureau consented to the assignment application.<sup>14</sup> T-Mobile notified the Commission that it acquired the Licenses on February 8, 2017.<sup>15</sup>

5. *T-Mobile’s Waiver Request*. On October 5, 2016, during the pendency of the assignment application, Bresnan, on behalf of itself and T-Mobile, requested a waiver of Section 27.14(g)(1) (Waiver Request), proposing alternative construction benchmarks and related commitments for the Licenses,

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<sup>6</sup> See *Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*), upheld on reconsideration, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Memorandum Opinion and Order on Reconsideration, 28 FCC Rcd 2671 (2013) (*700 MHz Reconsideration Order*).

<sup>7</sup> See 47 CFR § 27.14(g).

<sup>8</sup> See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122, 15151-52, para. 64 (2013).

<sup>9</sup> See 47 CFR § 27.14(g); see also *700 MHz Second Report and Order*, 22 FCC Rcd at 15293-94, 15349, paras. 6, 157.

<sup>10</sup> 47 CFR § 27.14(g)(1).

<sup>11</sup> *Id.* § 27.14(g)(2). See also *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, 15349, para. 153.

<sup>12</sup> Universal Licensing System (ULS) File No. 0007470149 (filed Sept. 27, 2016). Bresnan is a wholly-owned subsidiary of Charter Communications, Inc.

<sup>13</sup> See *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, and De Facto Transfer Lease Applications, and Designated Entity Reportable Eligibility Event Applications Accepted for Filing*, Public Notice, Rep. No. 11744 (WTB 2016).

<sup>14</sup> See *Wireless Telecommunications Bureau Market-Based Applications Action*, Public Notice, Rep. No. 11907 (WTB 2016).

<sup>15</sup> See Required Notification, ULS File No. 0007653669 (filed Feb. 8, 2017).

leading to 70 percent geographic coverage in each License area prior to the June 13, 2019, Final Construction Requirement deadline.<sup>16</sup> The three Licenses together cover much of Montana and portions of northern Wyoming:

- Eastern License WQJQ805 (Basic Economic Area (BEA) 144 - Billings, MT-WY), a Lower 700 MHz A Block license that covers portions of eastern and southern Montana and northern Wyoming;
- Eastern License WQJQ806 (BEA 145 - Great Falls, MT), a Lower 700 MHz A Block license that is geographically adjacent to WQJQ805 and covers north-central Montana; and
- Western License WQJQ807 (Cellular Market Area (CMA) 527 - Montana 5 - Mineral), a Lower 700 MHz B Block license in western Montana.<sup>17</sup>

6. The Waiver Request appeared on public notice for comment on October 6, 2016.<sup>18</sup> On November 30, 2016, T-Mobile committed to meeting the following reporting and implementation milestones:<sup>19</sup>

- Within four months of waiver grant, it would meet the Interim Construction Requirement for the Western License area;
- Within seven months of waiver grant, it would file a certification describing in detail the specific actions taken by T-Mobile to ensure that the performance requirements listed below can be met for each License;
- Within 13 months of waiver grant, it would deploy facilities sufficient to cover 40 percent of each Eastern License area;
- Within 25 months of waiver grant, it would meet the Final Construction Requirement for each Eastern License area; and
- By June 13, 2019, it would meet the Final Construction Requirement for the Western License area.

T-Mobile also committed to establishing new retail sites in the Eastern License areas by the end of 2018; maintaining 70 percent coverage in each License area for five years, subject to limited exceptions; and making good faith efforts to deploy service to the Fort Peck Indian Reservation.<sup>20</sup>

7. One party, RWA, opposed the Waiver Request. It argued that granting T-Mobile relief would unduly reward Bresnan despite its lack of license construction and could foreclose other parties from obtaining spectrum that might be reclaimed by the Commission if a License were not at least 70

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<sup>16</sup> Waiver Request, ULS File Nos. 0007491235 (WQJQ805), 0007491238 (WQJQ806), and 0007491243 (WQJQ807) (filed Oct. 5, 2016) (Waiver Request). *See also* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, File Nos. 0007491235, 0007491238, and 0007491243 (filed Oct. 6, 2016) (October Commitment Letter); *Ex Parte* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 30, 2016) (T-Mobile November *Ex Parte*).

<sup>17</sup> T-Mobile also holds a Lower 700 MHz A Block BEA license—WQIZ473 (BEA 146 - Missoula, MT)—that fully encompasses the area covered by WQJQ807.

<sup>18</sup> *See Wireless Telecommunications Bureau Seeks Comment on Request for Waiver of Accelerated Final Construction Deadline for Three 700 MHz Licenses in Montana*, Public Notice, 31 FCC Rcd 11043 (WTB 2016).

<sup>19</sup> *See* T-Mobile November *Ex Parte* at 4-5. These commitments go beyond those made in T-Mobile's Waiver Request and October Commitment Letter. *See* Waiver Request at 2; October Commitment Letter at 1-2.

<sup>20</sup> *See* T-Mobile November *Ex Parte* at 5. *See also* Waiver Request at 2, 17-18; October Commitment Letter at 2.

percent constructed as of June 13, 2017.<sup>21</sup> Four other parties urged grant of the Request, emphasizing the challenges with construction in the License areas and the public interest benefits T-Mobile's new competitive wireless services would bring to the citizens of Montana and Wyoming, particularly those in rural and Tribal areas.<sup>22</sup> T-Mobile also filed Reply Comments, explaining the challenges of securing backhaul capacity in Montana, as well as difficulties posed by its geography and sparse population.<sup>23</sup>

8. *T-Mobile Waiver Order.* The Division issued the *T-Mobile Waiver Order* on December 21, 2016. The Division found that granting T-Mobile a conditional waiver of Section 27.14(g)(1) pursuant to Section 1.925(b)(3)(i) would “serve the public interest by enabling T-Mobile to rapidly bring new and advanced wireless services to the citizens of Montana and Wyoming,”<sup>24</sup> especially those residing in rural and Tribal areas where service choices may be limited. To ensure that the public interest benefits of the waiver would be realized expeditiously, the Division required that T-Mobile provide coverage and offer service to: (1) at least 35 percent of the geographic area of the Western License WQJQ807 by April 21, 2017;<sup>25</sup> (2) at least 40 percent of the geographic area of each License by January 21, 2018; and (3) at least 70 percent of the geographic area of each License by January 21, 2019 (six months before the end of license term).<sup>26</sup> The Division ruled that, if T-Mobile failed to satisfy any of these performance conditions, the waiver would be invalid for the relevant License, and T-Mobile (as the party to whom the Division had granted the waiver) would be subject to Section 27.14(g)(2)'s “keep-what-you-serve” rule that would have applied as of June 13, 2017—the end of license term for the Licenses absent the Division's waiver of Section 27.14(g)(1).<sup>27</sup>

9. *Application for Review.* On January 23, 2017, RWA filed its Application for Review, arguing that the relief granted in the *T-Mobile Waiver Order* does not further the public interest and that the *Order* should be overturned.<sup>28</sup> RWA contends that, because the Division “made no finding of unique or unusual factual circumstances that would warrant a waiver” and its decision to grant a waiver “was based solely on Subsection 1.925(b)(3)(i),” the Division “must find both that a waiver would serve the public interest *and* that the underlying purpose of the Acceleration Rule would not be served or would be frustrated by application of the rule to the instant case.”<sup>29</sup> According to RWA, the Division “ignored both the underlying purpose of the rule and an important public interest argument.”<sup>30</sup> RWA argues that the purpose of Section 27.14(g)(1) is to prevent spectrum warehousing, and that the waiver relief—although granted to T-Mobile—benefits Bresnan even though it did not provide coverage and offer service in any of the License areas before the Interim Construction Requirement.<sup>31</sup> RWA argues that the Division could only grant the waiver to T-Mobile if it found that unavoidable circumstances prevented Bresnan from

<sup>21</sup> See RWA Comments; *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Nov. 16, 2016); *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Dec. 12, 2016).

<sup>22</sup> Montana Governor Steve Bullock Reply Comments; Montana State Representative Daniel Zolnikov Reply Comments; Montana State Senator Doug Kary Reply Comments; INCOMPAS Reply Comments.

<sup>23</sup> The Reply Comments included a letter in support of the Waiver Request from U.S. Senators Steve Daines and John Tester to Chairman Tom Wheeler, FCC (dated Oct. 6, 2016). See also Waiver Request at 5.

<sup>24</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13379.

<sup>25</sup> T-Mobile exceeded this coverage benchmark well before April 21, 2017. See *infra* para. 22.

<sup>26</sup> See *T-Mobile Waiver Order*, 31 FCC Rcd at 13384-85.

<sup>27</sup> See *id.* at 13384.

<sup>28</sup> Application for Review at 1.

<sup>29</sup> *Id.* at 4.

<sup>30</sup> *Id.*

<sup>31</sup> See *id.* at 3.

meeting the Interim Construction Requirement.<sup>32</sup> RWA further argues that “[t]he service promised by T-Mobile is speculative at best” and does not provide support for the relief requested by T-Mobile.<sup>33</sup> In addition, RWA argues—in an *ex parte* letter filed after its Application for Review—that the Division was precluded from granting relief to T-Mobile by Section 1.946(e) of the Commission’s rules.<sup>34</sup>

10. On February 7, 2017, T-Mobile and Bresnan filed an opposition to the RWA Application for Review.<sup>35</sup> They argue that Section 27.14(g)’s underlying purpose is to encourage access to spectrum and competition, especially in rural areas, and that the conditional relief afforded T-Mobile promotes this purpose.<sup>36</sup> T-Mobile contends that the public interest is served by the waiver relief because the conditions imposed on T-Mobile, coupled with its history as a diligent licensee, ensure that the citizens of Montana and Wyoming will benefit quickly from increased service and competition.<sup>37</sup> On February 17, 2017, RWA replied, disputing T-Mobile’s arguments,<sup>38</sup> and asserting that the waiver relief undermines an incentive (a license term reduction) to 700 MHz licensees to construct their networks.<sup>39</sup>

### III. DISCUSSION

11. Requests to waive the requirements of the wireless construction rules must “meet a high hurdle at the starting gate.”<sup>40</sup> In determining whether that standard is met, we must evaluate each case based on the specific circumstances that it presents. Under Section 1.925(b)(3)(i) of the Commission’s rules, the Commission may grant a rule waiver when two requirements are satisfied: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and (2) a

<sup>32</sup> See *id.* at 7-8 (citing *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153).

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319, at 2 (filed March 27, 2017) (RWA March 27 *Ex Parte*) (citing 47 CFR § 1.946(e)).

<sup>35</sup> Opposition of T-Mobile License LLC and Bresnan Communications, LLC, WT Docket No. 16-319 (filed Feb. 7, 2017) (T-Mobile Opposition).

<sup>36</sup> See *id.* at 2 (citing *T-Mobile Waiver Order*, *700 MHz Second Report and Order*).

<sup>37</sup> See *id.* at 3.

<sup>38</sup> RWA Reply to Opposition of T-Mobile License LLC and Bresnan Communications, LLC to Application for Review, WT Docket No. 16-319 (filed Feb. 17, 2017) (RWA Reply). RWA filed several *Ex Parte* letters thereafter, including the RWA Clarification Request, RWA March 27 *Ex Parte*, and RWA August 2017 *Ex Parte*, noted above. See also *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed March 8, 2017); *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed March 20, 2017); *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed May 19, 2017); *Ex Parte* Letter from Caressa D. Bennet, General Counsel, RWA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed June 13, 2017). T-Mobile also filed several *Ex Parte* letters. See *Ex Parte* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed Jan. 30, 2017); *Ex Parte* Letter from John Hunter, Senior Director, Engineering and Technology Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed March 20, 2017); *Ex Parte* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed April 21, 2017); *Ex Parte* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 16-319 (filed June 8, 2017) (T-Mobile June 8 *Ex Parte*). In its June 8 *Ex Parte*, T-Mobile states that the FCC should review construction filings made by several RWA members. T-Mobile June 8 *Ex Parte* at 2-3. This suggestion is outside the scope of this proceeding, and thus we decline to consider it in this *Memorandum Opinion and Order*. T-Mobile also filed a Progress Report and Certification, discussed further below.

<sup>39</sup> RWA Reply at 3.

<sup>40</sup> See *WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972).

grant of the requested waiver would be in the public interest.<sup>41</sup> As discussed below, we deny RWA's Application for Review and affirm the conditional waiver grant. Here, based on our review of the entire record, we are persuaded that the specific circumstances of this case support the conditional grant of a waiver and a finding that T-Mobile has satisfied the requirements of Section 1.925(b)(3)(i). The circumstances specific to this case include, as discussed below, the large size and remoteness of the License areas, the sparse population and difficult climate conditions, and the requirement that T-Mobile comply with certain commitments to ensure the provision of new and enhanced broadband service to rural and Tribal populations.

12. At the outset, we reject RWA's assertion that the Division could only grant a waiver of Section 27.14(g)(1) to T-Mobile if unavoidable circumstances prevented Bresnan from meeting the Licenses' Interim Construction Requirements.<sup>42</sup> While the Commission stated in the *700 MHz Second Report and Order* that it did "not envision granting waivers or extensions of construction periods except where unavoidable circumstances beyond the licensee's control delay construction," it did not foreclose the granting of waivers in particular cases that satisfy the FCC's waiver rules.<sup>43</sup> In fact, in the more recent *700 MHz Reconsideration Order*, the Commission explained that "[f]or specific cases of hardship . . . providers can seek waiver relief" related to their construction obligations.<sup>44</sup> The Commission explained that "requests must be well founded and not based solely on grounds of low population density," and it directed staff to "consider these types of requests on a case-by-case basis," as the Division did in this proceeding.<sup>45</sup>

13. It is well-established that the Commission may waive a rule where the particular facts make strict compliance inconsistent with the public interest,<sup>46</sup> and it may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>47</sup> We therefore reject RWA's contention that the Division could only have granted Section 1.925(b)(3) waiver relief here upon a finding that circumstances beyond Bresnan's control inhibited construction of the Licenses. RWA's argument conflates the standard for an extension under Section 1.946(e)(1), which expressly requires a showing that failure to meet the deadline is "due to involuntary loss of site or other causes beyond [the licensee's] control,"<sup>48</sup> with that for waiver under Section 1.925(b)(3).

14. Turning to the merits, we find that the specific circumstances of this case support affirming the Division's conditional grant of T-Mobile's Waiver Request under Section 1.925(b)(3)(i) of the Commission's rules. We emphasize that we find a waiver is appropriate here based on the totality of the factors present and not solely because it would facilitate expedited construction—parties seeking a waiver (including in the context of a transaction) could often argue that that would be the case. Here, we also conclude that relief, with conditions, is warranted given Section 27.14(g)(1)'s underlying purpose of bringing increased service to rural areas, the "increase[d] competition and consumer choice" resulting

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<sup>41</sup> 47 CFR § 1.925(b)(3)(i) (emphasis added). Under the second prong of Section 1.925(b)(3), the Commission may grant a request for a rule waiver when, in view of the unique or unusual factual circumstances of the case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. *Id.* § 1.925(b)(3)(ii).

<sup>42</sup> See Application for Review at 7-8.

<sup>43</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

<sup>44</sup> *700 MHz Reconsideration Order*, 28 FCC Rcd at 2674, para. 6.

<sup>45</sup> *Id.* at 2675, para. 9.

<sup>46</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>47</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>48</sup> 47 CFR § 1.946(e)(1).

from “entry of a new wireless carrier,”<sup>49</sup> and the particular challenges of bringing advanced wireless services to the License areas, which are vast (the area covered by the Licenses in Montana alone exceeds 119,496 square miles<sup>50</sup>), often mountainous, and subject to extreme weather.

15. We reject RWA’s claims that the Division ignored Section 27.14(g)(1)’s core purpose in granting the waiver under Section 1.925(b)(3)(i).<sup>51</sup> RWA argues that the core purpose of Section 27.14(g)(1) is to prevent spectrum warehousing and claims that, because Bresnan had not undertaken construction before assigning the Licenses to T-Mobile, it is being unduly rewarded.<sup>52</sup> While we do not disagree that one policy underpinning Section 27.14(g)(1) is to discourage spectrum warehousing, it is not the only policy the Commission sought to advance in adopting this rule. Rather, in the *700 MHz Second Report and Order*, the Commission expressly stated that the underlying purpose of Section 27.14(g)(1) is “to better promote access to spectrum and the provision of service, especially in rural areas.”<sup>53</sup> The Commission explained that Section 27.14(g)(1)’s performance requirements “will provide all licensees with incentives to serve more rural communities” and “are the most effective way to promote rapid service to the public, especially in rural areas.”<sup>54</sup>

16. We concur with the Division that, in the specific circumstances of this case, Section 27.14(g)(1)’s underlying purpose would be frustrated absent waiver relief,<sup>55</sup> and that the conditional relief granted in the *T-Mobile Waiver Order* “enable[s], and indeed commit[s], T-Mobile to quickly bring new wireless services to remote areas of Montana and Wyoming, including Tribal areas that may otherwise continue to be underserved.”<sup>56</sup> Grant of the conditional waiver thus promotes competitive choices in vast rural areas, extending throughout the state of Montana as well as northern Wyoming. T-Mobile acquired the Licenses in February 2017, and must provide coverage and offer service to at least 40 percent of the geographic area of each License in less than 12 months and 70 percent of each in less than two years.<sup>57</sup> If it does not meet these aggressive benchmarks in a License area, the waiver will terminate by its own terms, and T-Mobile would only retain what it had built as of June 13, 2017, in that License area.<sup>58</sup> Under these circumstances, we find that the Division properly relied on the Commission’s articulation of the underlying purpose of Section 27.14(g)(1)—“to better promote access to spectrum and the provision of service, especially in rural areas”<sup>59</sup>—in concluding that this purpose would be frustrated by strict application of the rule in the instant case.<sup>60</sup>

<sup>49</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13379.

<sup>50</sup> See FCC, Geographic Information Systems Database, <https://www.fcc.gov/general/geographic-information-systems>.

<sup>51</sup> Application for Review at 4-5. See also RWA Reply at 2, 3.

<sup>52</sup> Application for Review at 5.

<sup>53</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13381 (quoting *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153).

<sup>54</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15349, para. 155.

<sup>55</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13381, 13384.

<sup>56</sup> *Id.* at 13381.

<sup>57</sup> *Id.* at 13384-85.

<sup>58</sup> *Id.* at 13384.

<sup>59</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

<sup>60</sup> We also note that the Division properly relied on Section 309 of the Communications Act of 1934, as amended, to support the waiver grant. See *T-Mobile Waiver Order*, 31 FCC Rcd at 13381. Section 309 directs the Commission to ensure “the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas.” 47 U.S.C. § 309(j)(3).

17. We also reject as speculative RWA's claim that the *T-Mobile Waiver Order* undermines the purpose of Section 27.14(g)(1) by limiting the ability of other entities to obtain spectrum under Section 27.14(g)(2).<sup>61</sup> Under Section 27.14(g)(2) and absent the rule waiver, if at least 70 percent of the relevant area of a License were not constructed by June 13, 2017, spectrum would become available for future relicensing by the Commission. While RWA asserts that there are "RWA members who will apply for any spectrum" returned to the Commission under Section 27.14(g)(2),<sup>62</sup> RWA has not identified any member that would both do so and provide service, and no RWA member has expressed such an interest, let alone a firm commitment, in this proceeding. In any event, as explained above, the waiver is expressly conditioned to make clear that, if T-Mobile fails to meet any performance requirement prescribed by the Division, it would only retain spectrum for the area(s) that it had constructed by June 13, 2017; the remaining spectrum would return to the Commission for relicensing under Section 27.14(g)(2)'s "keep-what-you-serve" rule that would have applied absent the waiver.<sup>63</sup>

18. In weighing the public interest, we rely in part on the Division's finding that a waiver would extend new and advanced competitive wireless services across rural and Tribal lands of Montana (the fourth largest state by area<sup>64</sup>) as well as northwestern Wyoming.<sup>65</sup> As the Division observed, the waiver would enable (in fact, require) T-Mobile to bring service to rural areas, noting that "[a]ll 49 counties comprising the three License areas are rural as defined by the Commission" and that "39 of the counties have a population density of less than five persons per square mile."<sup>66</sup> The Division also properly considered that both "Montana and Wyoming are demonstrably underserved by wireless service providers, ranking among the five states with the least broadband access in the United States,"<sup>67</sup> and that a waiver would facilitate T-Mobile's provision of service to these underserved areas.<sup>68</sup> The conditional relief afforded to T-Mobile requires it to quickly deliver competitive wireless broadband services throughout much of Montana and parts of Wyoming, states where it is paramount to bridge the digital divide.<sup>69</sup> The Division also appropriately considered that, with the addition of the 700 MHz Licenses to T-Mobile's Montana network, T-Mobile would be able to provide consumers advanced services

<sup>61</sup> Application for Review at 5-6.

<sup>62</sup> RWA March 27 *Ex Parte* at 3.

<sup>63</sup> See *T-Mobile Waiver Order*, 31 FCC Rcd at 13384. For example, if T-Mobile does not provide at least 70 percent geographic coverage in a License area by January 21, 2019, it will only retain that portion of the License area it had constructed as of June 13, 2017. T-Mobile thus must fulfill its promise of rapid extensive construction or face a penalty of losing all the service area it had constructed after June 13, 2017.

<sup>64</sup> See U.S. Census, State Area Measurements and Internal Point Coordinates, <https://www.census.gov/geo/reference/state-area.html>.

<sup>65</sup> See *T-Mobile Waiver Order*, 31 FCC Rcd at 13381-82.

<sup>66</sup> *Id.* at 13382.

<sup>67</sup> *Id.* (citing Nat'l Telecommunications & Info. Admin., U.S. Dep't of Commerce, U.S. Broadband Availability: June 2010 – June 2012, at 12 tbl. 5 (May 2013), [http://www.ntia.doc.gov/files/ntia/publications/usbb\\_avail\\_report\\_05102013.pdf](http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf)). Montana ranks 50<sup>th</sup> in the United States for access to broadband service with a speed greater than 10 Mbps, greater than 25 Mbps, and greater than 50 Mbps. Wyoming ranks close behind—47<sup>th</sup> for access to broadband service with a speed greater than 10 Mbps, 48<sup>th</sup> for greater than 25 Mbps, and 49<sup>th</sup> for greater than 50 Mbps. Nat'l Telecommunications & Info. Admin., U.S. Dep't of Commerce, U.S. Broadband Availability: June 2010 – June 2012, at 12 tbl. 5 (May 2013), [http://www.ntia.doc.gov/files/ntia/publications/usbb\\_avail\\_report\\_05102013.pdf](http://www.ntia.doc.gov/files/ntia/publications/usbb_avail_report_05102013.pdf).

<sup>68</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13382.

<sup>69</sup> See also RWA March 27 *Ex Parte* at 3-4 (noting that the waiver relief would enable "an existing service provider [T-Mobile] to improve its offerings *vis a vis* its competitors," but that "[t]o the extent that other providers desired to provide services there is the very real possibility that the number of competitors in the markets in question would increase").



throughout the state.<sup>70</sup> Indeed, as described below, T-Mobile has already begun to offer service pursuant to the conditions of the waiver.

19. The Division also rightly considered the public interest benefits of T-Mobile's bringing new services to Tribal areas in the License areas, noting that Tribal citizens lack access to advanced telecommunications services more often than the rest of the country<sup>71</sup> and that "[t]his disparity is even more acute in Montana and Wyoming . . . ."<sup>72</sup> Montana's Native Americans experience unusual rates of poverty and are therefore especially in need of competitive broadband service choices. For example, more than 37 percent of persons residing on the Rocky Boy's Reservation and Off-Reservation Trust Land suffer from poverty, while more than one in five of those residing on the Fort Peck Indian Reservation and Off-Reservation Trust Land suffer from poverty.<sup>73</sup> The Commission has stated that access to basic telecommunications is essential to every American, emphasizing that "we have a duty to do all that we can to ensure that access to services on tribal lands is increased well beyond current levels."<sup>74</sup> In view of the entire record before us, we agree with the Division's finding that, by granting the waiver, underserved rural and Tribal areas are more likely to receive new competitive mobile broadband services more quickly than they otherwise would absent the waiver.<sup>75</sup>

20. We now turn to RWA's claims that the *Order* sets an undesirable precedent,<sup>76</sup> may cause "some licensees to ignore their buildout obligations," and that delays in service are now more likely in "other markets."<sup>77</sup> The tailored relief granted to T-Mobile does not dilute Section 27.14(g)(1) or any other Commission rule. As explained above, licensees must meet a high hurdle in seeking to obtain a waiver of our construction rules and, given the consequences of failing to meet that standard, the Commission has appropriately incentivized compliance with its buildout obligations. At the same time, it has long been the case that the Commission may waive a rule when it finds that the purpose of the rule is better served by another, more effective implementation of overall policy on an individual basis.<sup>78</sup>

21. As to the three Licenses subject to the Waiver Request, the Commission specifically envisioned that requests for waiver of Section 27.14(g)(1) would be considered case-by-case, as noted above, and we conclude that a waiver is warranted under the totality of the circumstances presented,

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<sup>70</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13382.

<sup>71</sup> In fact, the Commission has found that lack of telecommunications services is "even more severe for Americans on rural Tribal lands," *2016 Broadband Progress Report*, 31 FCC Rcd 699, 750, para. 121 (2016), and that "communities on Tribal lands have historically had less access to telecommunications services than any other segment of the population." *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11794, 11798 (2000) (stating that, "[m]oreover, tribal communities have less access to communications services than low-income communities generally.") (*Tribal Lands Order*).

<sup>72</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13382-83.

<sup>73</sup> See U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates, <https://www.census.gov/tribal/>.

<sup>74</sup> *Tribal Lands Order*, 15 FCC Rcd at 11798-99.

<sup>75</sup> See *T-Mobile Waiver Order*, 31 FCC Rcd at 13383. T-Mobile already serves the Montana Flathead Tribal Land, and the *Order* enables it to also cover much of the Rocky Boys, Crow, and Northern Cheyenne Tribal lands. See *id.* In addition, the Division conditioned the *Order* on T-Mobile making "good faith efforts to extend service to the Fort Peck Reservation, BEA 144, before the January 21, 2019, 70 Percent Coverage Benchmark, including working with Tribal leaders to identify and secure locations for tower construction or access and backhaul capabilities and to reach agreements facilitating use of those locations." *Id.*, 31 FCC Rcd at 13385.

<sup>76</sup> Application for Review at 8.

<sup>77</sup> *Id.* at 6.

<sup>78</sup> See *supra* para. 13.

including as discussed herein, those circumstances identified by the Division in the *T-Mobile Waiver Order*. We will continue to review any requests for waiver carefully considering the specific facts of each case, including the scope of the requested waiver.

22. RWA further contends that “speculative promises” of future wireless service cannot anchor the Division’s finding that the public interest will be served by the waiver grant.<sup>79</sup> Regarding this issue, we find that the Division did not just rely on “promises,” but properly adopted stringent performance requirements and related conditions to ensure that T-Mobile fulfills its commitment to quickly introduce new services in the three rural License areas, including the requirements that T-Mobile serve at least 35 percent of the Western License area by April 21, 2017, at least 40 percent of each License area by January 21, 2018, and at least 70 percent of each License area by January 21, 2019.<sup>80</sup> In fact, on February 17, 2017, T-Mobile filed a notification that it already had exceeded the April 21, 2017, coverage benchmark for Western License WQJQ807.<sup>81</sup> T-Mobile’s notification demonstrates that it was serving 62 percent of that License area by February 2017, far surpassing the required 35 percent benchmark.<sup>82</sup>

23. On July 21, 2017, as required by the *T-Mobile Waiver Order*, T-Mobile filed a sworn statement describing specific steps it has taken toward meeting its 40 Percent and 70 Percent Coverage Benchmarks and certifying that it expects to meet those Benchmarks for each of the Licenses.<sup>83</sup> Notably among the steps taken, for the two Eastern License areas, T-Mobile reported that it has: identified “search rings” within which transmitter facilities will be located; completed preliminary radio frequency design for over 95 percent of the planned sites; applied for and obtained zoning and building approvals for over half of the sites that will be built for T-Mobile as part of the network; contracted for backhaul for approximately three quarters of the sites that will be connected via fiber; performed detailed site surveys and engineering for sites that will be backhauled with microwave; and selected an original equipment manufacturer to supply the radio equipment and a service provider to perform the construction work for the 180 planned sites.<sup>84</sup> Based on the materials before us, we find that this is positive evidence that T-Mobile is taking the waiver conditions and performance requirements seriously and is on target to meet or exceed the Interim and Final Construction Benchmarks established in the *T-Mobile Waiver Order*. The construction notifications that we are requiring T-Mobile to file herein, as discussed below, will confirm the extent to which T-Mobile built by June 13, 2017, consistent with the terms of that *Order*.

24. *Section 1.946(e)(3)*. After filing its Application for Review, RWA argued that Section 1.946(e)(3)—which is an independent rule provision that provides that “[e]xtension requests will not be granted for failure to meet a construction or coverage deadline . . . because the licensee intends to assign

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<sup>79</sup> Application for Review at 7.

<sup>80</sup> *T-Mobile Waiver Order*, 31 FCC Rcd at 13383-84.

<sup>81</sup> See T-Mobile Notification of Construction, Exhibit 1 - 700 MHz Buildout Demonstration & Engineering Exhibit, ULS File No. 0007667068 (T-Mobile NT); *Wireless Telecommunications Bureau Market-Based Applications Accepted for Filing*, Public Notice, Rep. No. 12076 (WTB 2017).

<sup>82</sup> See T-Mobile NT.

<sup>83</sup> Letter from Dave Mayo, Senior Vice President – Technology Strategy, Finance and Development, T-Mobile, to Marlene H. Dortch, Secretary, FCC (filed Jul. 21, 2017) (T-Mobile Progress Report and Certification).

<sup>84</sup> T-Mobile Progress Report and Certification at 2-3 (adding, at 3, that for the Western License area, only three additional sites are needed to meet the 70 Percent Coverage Benchmark, and that T-Mobile has identified and completed radio frequency design for those sites).

the authorization”—barred the Division’s waiver grant.<sup>85</sup> Although RWA did not raise this argument in its Application for Review, we will address it here in the interest of providing certainty.

25. RWA claims that, despite T-Mobile seeking waiver of Section 27.14(g)(1) solely pursuant to Section 1.925(b)(3), and the Division finding that a waiver was warranted under that rule, the Division was required to address the constraints that Section 1.946(e)(3) imposes on its authority to grant the waiver relief requested by T-Mobile.<sup>86</sup> RWA concedes that the Division did not act under Section 1.946(e)(3).<sup>87</sup> In fact, the Division plainly stated it was not acting under that rule, and RWA cites no authority for its claim that Section 1.946(e)(3) bars the Division from exercising its discretionary waiver authority under Section 1.925(b)(3). We find that the Division was not obligated to “justify its decision” to act under Section 1.925(b)(3) instead of Section 1.946(e)(3), or to waive Section 1.946(e)(3) to afford T-Mobile relief under Section 1.925(b)(3) as RWA suggests.<sup>88</sup>

26. *Construction Notification Requirement.* Finally, we address RWA’s separate request, filed July 17, 2017, and reiterated in its filing of August 4, 2017, that T-Mobile be required to file a construction notification for each License area demonstrating its geographic coverage as of June 13, 2017.<sup>89</sup> We will treat RWA’s request as an informal request for Commission action under Section 1.41 of our rules and grant it for the reasons that follow.<sup>90</sup>

27. As RWA notes, the Division’s waiver requires T-Mobile to satisfy performance conditions for each License and, if it fails to meet a relevant condition, it would only retain the geographic portion of the License area it served as of June 13, 2017 (the end of term for each License absent the Division’s waiver of Section 27.14(g)(1)).<sup>91</sup> RWA also notes that in a recent order granting the Alaska Wireless Network (AWN)<sup>92</sup> a conditional waiver of Section 27.14(g)(1) for a 700 MHz license covering the State of Alaska, the Division required AWN to submit a construction showing “so that the Bureau may determine AWN’s served geographic portion as of June 13, 2017” if it failed to meet a waiver condition.<sup>93</sup> RWA states that T-Mobile’s “filing of system maps and shapefile data reflecting coverage *as of June 13, 2017*” is necessary so that interested parties could determine the boundaries of a T-Mobile License area if it were to fail to meet a waiver condition.<sup>94</sup> We agree that such a condition would be appropriate here to ensure that interested parties and staff are able to ascertain the area of a License served as of June 13, 2017, should T-Mobile not fulfill a waiver condition. Accordingly, we hereby direct T-

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<sup>85</sup> RWA March 27 *Ex Parte* at 2. 47 CFR 1.946(e)(3) provides that “[t]he Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.”

<sup>86</sup> RWA March 27 *Ex Parte* at 2.

<sup>87</sup> See *id.* The Division stated that “RWA . . . claims that the Waiver Request does not meet the requirements for an extension of time to construct a license under Section 1.946(e)(1) of the Commission’s rules. . . . We do not act under Section 1.946(e)(1) today, however.” *T-Mobile Waiver Order*, 31 FCC Rcd at 13383.

<sup>88</sup> See RWA March 27 *Ex Parte* at 2.

<sup>89</sup> See RWA Clarification Request at 2; RWA August 2017 *Ex Parte* at 2.

<sup>90</sup> 47 CFR § 1.41 (“requests for action may be submitted informally”).

<sup>91</sup> See RWA Clarification Request at 1.

<sup>92</sup> AWN is a wholly-owned subsidiary of General Communication, Inc.

<sup>93</sup> RWA Clarification Request at 2 (citing *Alaska Wireless Network Request for Waiver of Section 27.14(g)(1)*, WT Docket No. 16-402, Letter Order, 32 FCC Rcd 4728 (WTB Mobility Div. 2017)).

<sup>94</sup> RWA Clarification Request at 2 (emphasis in original).

Mobile to file, within 30 days of this *Memorandum Opinion and Order's* release date, a construction notification for each License, demonstrating its geographic coverage area as of June 13, 2017.<sup>95</sup>

#### IV. CONCLUSION AND ORDERING CLAUSES

28. In sum and for the above reasons, we find that the specific factors and public interest benefits present here support a conditional waiver of Section 27.14(g)(1). We therefore deny RWA's Application for Review. For the reasons stated above, however, we grant RWA's separate request that we require T-Mobile to file construction notifications demonstrating its geographic coverage for each License area as of June 13, 2017.

29. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission's Rules, 47 CFR § 1.115, the Application for Review filed by the Rural Wireless Association, Inc. on January 23, 2017, IS DENIED.

30. And, IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41, 1.106(a)(1), and 1.946(d) of the Commission's Rules, 47 CFR §§ 1.41, 1.106(a)(1), and 1.946(d), the request of the Rural Wireless Association, Inc., filed on July 17, 2017, and reiterated in its filing dated August 4, 2017, IS GRANTED and within 30 days of this *Memorandum Opinion and Order's* release date, T-Mobile License LLC SHALL FILE construction notifications, demonstrating its geographic coverage areas as of June 13, 2017, for Call Signs WQJQ805, WQJQ806, and WQJQ807.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>95</sup> As noted above, we are adding this condition to monitor progress with the waiver conditions imposed on T-Mobile in the *T-Mobile Waiver Order*.