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Federal Communications Commission
Office of the Secretary

Exhibit 1
FCC Form 601

I. INTRODUCTION

Triad 700, LLC (“Triad”), by its attorneys, hereby respectfully submits this request for an extension of the 700 MHz A Block buildout deadline that is applicable to its licenses identified by call signs WQJU653, covering the Salisbury, MD-DE-VA market (BEA014) (the “Salisbury License”); WQJU654, covering the Erie, PA market (BEA054) (the “Erie License”); WQJU655, covering the Reno, NV-CA market (BEA151) (the “Reno License”); and WQJU656, covering the entire state of Alaska (BEA171) (the “Alaska License”) (collectively, the “Triad Licenses”).¹ In the absence of the requested relief, Triad would be obligated to provide signal coverage and offer service over at least 35 percent of the geographic area of the Markets by no later than June 13, 2013, or have its license term reduced by two years and, possibly, be subject to enforcement action, including forfeitures, and/or lose authority to serve some or all of the Markets.²

As is set forth in detail below, the requested relief is justified because (a) circumstances beyond Triad’s control prevent Triad from meeting the construction deadline; (b) the underlying purpose of the construction rule would not be served, and actually would be frustrated, by the failure to grant the requested relief; (c) unique or unusual factual circumstances, which have arisen since Triad acquired the Triad Licenses, would make the strict application of the construction deadline inequitable, unduly burdensome and contrary to the public interest; and, (d) Triad has no reasonable alternative to seeking a waiver. Triad seeks an extension of the

¹ See 47 C.F.R. § 27.14(g)(1).

² See 47 C.F.R. § 27.14(g)(2). As noted herein, Triad has taken significant actions in an effort to proceed with the construction of the Triad Licenses. Triad believes, therefore, that it has met the “meaningful efforts” test the Commission has indicated carriers must meet to avoid sanctions in addition to the foreshortened license term. See *Public Notice, 700 MHz Construction Reporting Requirements*, DA 11-1981 (rel. Dec. 6, 2011). If the Commission disagrees, Triad also requests a waiver of the meaningful efforts standard for the same reasons that it seeks relief from the construction deadline.

interim June 13, 2013, construction deadline to the later of June 13, 2015 or two years after the Commission concludes its rulemaking proceeding regarding interoperability in the Lower 700 MHz Band.³

II. STATEMENT OF PERTINENT FACTS

Triad is a member of the portfolio of wireless companies of Triad Communications (collectively, “Triad Communications”) owned and operated by wireless entrepreneurs, Barry Lewis and Craig Viehweg.⁴ The principals of Triad Communications have a successful record of building and operating broadband stations. For example, Triad Cellular Corporation constructed and operated cellular systems in rural Texas, Oklahoma, Utah and Minnesota covering 1,000,000 people across 100,000 square miles and provided high quality wireless service to previously underserved communities and highway corridors prior to its acquisition by Western Wireless Corporation. Triad Communications sought to draw on this experience when it acquired the Triad Licenses in Auction No. 73 with the intention of providing wireless fourth generation (“4G”) broadband data services throughout the licensed geography by building out a “greenfield” wireless network. Since being licensed, Triad has been actively exploring putting its A Block licenses to use to provide 4G data service to communities that are currently un-served or under-served by existing wireless and wireline operators. These communities are typically too sparsely populated to be economically served by cable plant, are too distant from the telephone company central office for DSL service, and therefore lack competitive choices for broadband. However,

³ *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69 (rel. Mar. 21, 2013).

⁴ The Triad family of companies has included Triad Cellular Corporation; 3G PCS, LLC; Harbor Guardband, LLC; Harbor Wireless, LLC; Triad AWS, LLC and Triad 700, LLC.

these areas are well suited for wireless broadband service, particularly given the strong propagation characteristics of 700 MHz spectrum.

Unfortunately for Triad, a series of unanticipated and unforeseeable intervening events has negatively impacted Triad's ability to construct the Triad Licenses. The combined problems of a lack of device interoperability across the Lower 700 MHz Band, along with the significant impact of Channel 51 interference on operations in many markets, have stifled the A Block ecosystem. This has been particularly damaging for a greenfield entrant like Triad, which must rely on leveraging the economies of scale of other, larger providers in order to survive in an intensely competitive industry. The uncertainty surrounding Channel 51 interference issues has also impacted Triad. Widespread, and well-documented, problems with relocating protected Channel 51 broadcasters have served to stifle the ecosystem for A Block deployment, an unexpected circumstance that is particularly damaging to startup operators like Triad. And, the looming prospect of broadcasters being able to garner revenues from the Commission's recently-announced incentive auctions has caused the resolution of the Channel 51 interference problems across the country to come to a standstill.

While Triad does not have any active Channel 51 broadcasters in the Markets, the prospect of Channel 51 operations has loomed over its construction plan because the Commission continued to accept and process Channel 51 applications for more than two years after Auction 73, which served to exacerbate the extent of the Channel 51 interference problem. This seriously impacted the ability of A Block licensees like Triad to predict where they would be required to protect broadcasters from interference. Under the FCC's rules, A Block licensees must "accord the same level of adjacent channel protection to both incumbent and future analog and digital broadcast facilities on [C]hannel 51," including those who commenced operations

*after the auction.*⁵ Conversely, no such protection from a new Channel 51 broadcaster is afforded to an A Block licensee that has already deployed its network in a market that subsequently is occupied by a Channel 51 broadcaster. This contradictory circumstance has had a particular impact on Triad, as it saw two applications for authority to broadcast over Channel 51 filed *post-auction* that were certain to negatively impact its ability to provide service over the Salisbury License.⁶ Fortunately, these two applications were included in the Commission's general freeze on the processing of Channel 51 applications⁷ – but had already been pending for *one year* by the time the freeze was instituted. Thus, even with the freeze, Triad's ability to deploy service had already been significantly impacted for an extended period. The unexpected circumstance that Triad was unable to determine precisely what geography would be impacted by these Channel 51 stations – and how any service already deployed might be impacted – is emblematic of the environment of uncertainty that has constrained Triad's ability to provide service over the Triad Licenses.

⁵ *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd. 18279, ¶ 124 (2004).

⁶ See CDBS File No. BNPDTL-20100817AAR (Rehoboth, DE; filed Aug. 17, 2010) and BNPDTL-20100913AAO (Salisbury, MD; filed Sept. 13, 2010). Rehoboth is located in Sussex County, Delaware, while Salisbury is located in Wicomico County, Maryland – both of which are included within the geography covered by the Salisbury License. Although low-power television stations are not entitled to the same interference protection as full power or Class A stations, licensees still must engage in the process of notifying these stations of their intent to initiate service and compelling the station to relocate from Channel 51. This is a time- and resource-intensive process that causes uncertainty and delay in obtaining interference-free A Block spectrum.

⁷ *General Freeze on the Filing and Processing of Applications for Channel 51 Effective Immediately and Sixty (60) Day Amendment Window for Pending Channel 51 Lower Power Television, TV Translator and Class A Applications*, Public Notice, 26 FCC Rcd 11409 (MB 2011) (“*Channel 51 Freeze PN*”).

In addition, Triad faces obstacles that are unique to its Alaska License. As its licensed territory covers the entire state of Alaska, the Alaska License overlaps a significant amount of tribal and government land, which significantly complicates its deployment. As discussed above, as part of its business plan Triad is exploring providing service to un-served or under-served tribal areas in Alaska. However, much of the territory designated as tribal land in Alaska is essentially uninhabited, and the Commission has not yet provided any guidance on what portions of these areas should be included in the total land area from which the covered geography percentage⁸ is derived. Until this outstanding question is resolved, Triad's network deployment plans for the Alaska License continue to face substantial uncertainty that is entirely outside of Triad's control. Triad previously has asked the Commission to act on a pending petition for reconsideration dealing with this issue,⁹ and reiterates that request here in order to provide the company with much-needed certainty regarding its construction obligations.

A lack of interoperability also represents an external factor beyond the control of Triad that has further hampered its efforts to roll out a commercially viable lower band 700 MHz A Block service. Notably, Triad is far from alone in being impacted by the lack of interoperability in the Lower 700 MHz Band. On July 27, 2012, the Competitive Carriers Associate ("CCA") filed a Request for Extension of the Build-Out Deadlines for Lower 700 MHz A Block

⁸ See 47 C.F.R. § 27.14(g)(1).

⁹ Specifically, Triad asked the Commission to adopt the position that zip codes with fewer than five persons per square mile be removed from the coverage calculations. See Triad 700, LLC 700 MHz Performance Status Report for WQJU656 (filed Jan. 13, 2013) (citing *MetroPCS Communications, Inc. Petition for Clarification and Reconsideration*, WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86 and WT Docket No. 07-166 (filed Sept. 20, 2007)).

Licenseses¹⁰ with the Commission on behalf of its impacted members. In the CCA Extension Request, CCA argues in favor of the same relief sought by Triad here, noting that, “[i]n the years since the 700 MHz auction, Lower 700 MHz A Block licensees have faced substantial and unforeseen difficulties in deploying that spectrum for wireless services, largely because of the lack of device interoperability across the 700 MHz Band.”¹¹ Indeed, Triad purchased the Triad Licenses with the reasonable expectation that mobile units operating on the lower 700 MHz A Block would be interoperable with the other 700 MHz blocks (B Block and C Block), as was the case in all previously auctioned bands (e.g., PCS and AWS). However, *after the auction*, events occurred that indicated this would not be the case. A boutique band class (Band Class 17) was created by the standards body covering only the Lower 700 MHz B and C Blocks. As a result of this balkanization of the Lower 700 MHz Block, the market for A Block equipment has been extremely slow to develop. To the extent equipment is available, it is expensive due to lack of scale. And, the commercial viability of the services which use this equipment is uncertain due to the inherent roaming limitations due to the lack of interoperability.

As a greenfield entrant that would be operating in only a few regions across the United States, nationwide roaming will be a key component of Triad’s data service offering. As wireless customers become increasingly mobile, it simply is expected that their data service will travel with them. A startup operator that is unable to offer nationwide roaming simply cannot compete in the marketplace. Without device interoperability, Triad will be unable to enter into

¹⁰ See “Request for Extension of the Build-Out Deadlines for Lower 700 MHz A Block Licenses,” attachment to Competitive Carriers Association *Ex Parte* Presentation, WT Docket No. 12-69 (filed Oct. 17, 2012) (“CCA Extension Request”). Triad incorporates by reference herein all of the legal and policy arguments made in the CCA Extension Request.

¹¹ CCA Extension Request at 2.

roaming arrangements with other 700 MHz operators, substantially curtailing its ability to offer 4G service to its customers. Thus, even if Triad were able to obtain cost-effective Band 12 devices, it still would be faced with the insurmountable task of finding nationwide roaming partners whose networks would interoperate with these devices. Currently, the lack of chipsets that would allow interoperability across both the Lower and the Upper portions of 700 MHz spectrum eliminates Verizon as a potential roaming partner, AT&T operates only over Band Class 17, while Sprint and T-Mobile have not acquired 700 MHz spectrum and would be therefore unable to serve as Band Class 12 roaming partners to Triad. Notwithstanding the substantial obstacles faced by Triad, in terms of actual deployment, Triad has taken a series of significant steps toward construction to deploy promptly when the structural interoperability and interference issues are solved.

Specifically, Triad has investigated technological solutions for providing service over the Triad Licenses with multiple equipment manufacturers and hosted service providers. Triad also has attended a number of technical forums, trade shows and users groups to discuss the A Block deployment challenges that they face with technical solution providers and equipment vendors. Triad has also commissioned geographic area studies, including an assessment of private versus public lands, population density and broadband availability in those markets. Triad has employed the information gleaned from these studies to identify potential tower sites in each market and has engaged tower owners to discuss the availability of tower space and backhaul facilities at these sites.

Triad has explored a number of different technical solutions for A Block deployment, each of which has unique RF characteristics with respect to transmit power and receiver sensitivity. In order to determine which solution is best for deployment over the Triad Licenses,

Triad has commissioned propagation studies using the performance criteria of customer equipment that is available for other band classes in combination with various base station RF equipment in order to review the performance characteristics of each. Once Triad has confirmed the type of customer equipment that will be made available, the final system design can be completed and network performance can be optimized.

Overall, the lack of access to affordable equipment, the lack of device interoperability and uncertainty surrounding Channel 51 interference have all conspired to make it effectively impossible for Triad to economically construct the Triad Licenses. While Triad would like to provide service over the spectrum that it paid more than \$3.8 million to acquire, a series of unforeseeable intervening events have prevented it from doing so.

III. AN EXTENSION OR WAIVER OF THE MID-TERM CONSTRUCTION DEADLINE IS JUSTIFIED

The facts set forth above justify an extension of the June 13, 2013 interim construction deadline on multiple grounds, any one of which, standing alone, would be sufficient to support the relief requested. Section 1.946(e) of the FCC rules allows a licensee to request an extension of a construction or coverage requirement prior to the deadline, and provides that the request may be granted if the inability to meet the deadline is due to causes beyond the licensee's control. And, Section 1.925 of the FCC rules empowers the Commission to waive specific requirements of the rules upon request if (a) the underlying purpose of the rule would not be served or would be frustrated by the application of the rule, and a waiver would serve the public interest; or (b) unique or unusual circumstances are presented such that it would be inequitable, unduly burdensome or contrary to the public interest to enforce the rule, and the applicant has no reasonable alternative. These provisions, as applied in the governing case law precedents, justify the relief that Triad is seeking.

A. Causes Beyond the Licensee's Control Justify the Requested Relief

The entire interoperability problem has arisen due to actions by third parties that are beyond Triad's control. The standard-setting body 3GPP came up with the Band Class 17 classification that has balkanized the 700 MHz band, and AT&T has seized upon it to encourage manufacturers to produce non-interoperable units, thus depriving A Block carriers of the benefits of scale necessary to spur the timely production of affordable units. All of these are actions that a greenfield entrant such as Triad has no ability to alter on its own.

Notably, Triad could not have reasonably anticipated the situation it finds itself in. While Triad was aware of the obligation to protect Channel 51, the DTV transition was in process and Triad expected the FCC and the industry to work together to address this interference issue. Triad also expected the entire wireless industry to work together to develop an interference solution that would promote a robust interoperable 700 MHz band. Triad certainly did not anticipate that the standards body with the support of the major carriers would introduce specifications in the 3GPP allocation table that isolated the Lower 700 MHz A Block.

In sum, Triad's unenviable and unexpected position of having delays associated with Channel 51 licensing uncertainty, and a substantial interoperability and equipment availability obstacles Triad faces as a 700 MHz A Block licensee, justify the requested relief because Triad has no ability to alter these situations on its own.

B. The Underlying Purpose of the Rule Will Not Be Eviscerated

The purpose of the construction rule was to encourage build-out and the deployment of beneficial service to the public. As noted above, the failure to construct is due to external factors that Triad could not control. In fact, failing to grant the extension would actually undermine the purpose of the rule by interfering with the ability of an experienced rural operator like Triad to

enter the Markets on artificially-accelerated deployment timelines that were not foreseeable when the Triad Licenses were originally purchased. Shortening the license term or recapturing some or all of the Markets' area would actually increase the prospect that the provision of beneficial services to the public likely would be delayed, not accelerated, by denying the requested relief.

C. Special Circumstances Exist that Justify a Waiver

There also are certain unique and unusual circumstances presented here that would render it fundamentally unfair to strictly enforce the interim construction deadline against Triad. Specifically, the Commission has itself taken actions that have served to complicate the efforts of 700 MHz A Block licensees to construct and operate commercially viable systems. First, the Commission continued to accept and process Channel 51 applications for more than two years after Auction 73, which served to exacerbate the Channel 51 interference problem. Second, while the Commission has been pondering the interoperability problem for an extended period of time, it has taken no action to resolve the issue. Third, the Commission has developed and is moving forward with an incentive auction program involving TV broadcasters which holds promise in the long term of freeing up additional spectrum for broadband usage but, in the short term, appears to have reduced the incentive of Channel 51 operators to enter into voluntary agreements with A Block licensees.¹² The impact of these actions is discussed in greater detail below.

¹² Although there is some hope that the incentive auction may eventually eliminate the Channel 51 interference problem if Channel 51 is repacked and moved from its current location, the incentive auction is tentatively scheduled for 2014 at the earliest – long past the mid-term construction benchmark that A Block licensees are currently subject to.

In the case of the Markets, no new or additional Channel 51 operations were licensed subsequent to Auction 73. However, as discussed above, the pending applications for Channel 51 stations impacting the Salisbury License created an environment of uncertainty surrounding Triad's network engineering decisions. Although the Commission has subsequently instituted a general freeze on the processing of Channel 51 applications,¹³ the continued licensing of Channel 51 stations (prior to the freeze) exacerbated the interference problems and increased the number of markets that were adversely affected nationwide. This has slowed the development of the A Block spectrum. This fact, coupled with the interoperability problem, has slowed the development of equipment and increased the cost of equipment by reducing the scale of the early market. And, the Commission's failure to resolve the outstanding issue of covered tribal lands has slowed Triad's ability to build its Alaska License.

With respect to interoperability, this issue was first raised publicly in a petition filed with the Commission on September 29, 2009,¹⁴ and remains unresolved. The fact that the issue is "in play" has had the unfortunate effect of discouraging manufacturers from proceeding as fast as expected with the development and sale of lower A Block 700 MHz equipment.

Incentive auctions were recommended by the Commission in the 2010 *National Broadband Plan*. The first step in the process was to secure authority from Congress to conduct such auctions, which occurred with the passage of the Spectrum Act in 2012.¹⁵ This led to the

¹³ See *Channel 51 Freeze PN*.

¹⁴ See *Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to Be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks*, Petition for Rulemaking, RM-11592 (filed Sep. 29, 2009).

¹⁵ See Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 47 U.S.C. Section 309(j) (8)(G).

Commission's issuance of a *Notice of Proposed Rulemaking*,¹⁶ in which it outlined its intent to hold a broadcast incentive auction in 2014. Through this auction, the Commission plans to offer to licensees of full power or Class A television stations the ability to return some or all of their broadcast spectrum for repacking and auction, in exchange for which they will receive a share of the auction proceeds for commercial mobile wireless use. While this series of actions is laudable, one perhaps unintended consequence is that many Channel 51 broadcasters, faced with the prospect of monetizing their existing spectrum by taking advantage of the new incentive auction proposal, have adopted a "wait and see" attitude with respect to voluntary relocation negotiations with A Block licensees. The record in the Commission's Channel 51 proceeding demonstrates that "the potential for Channel 51 broadcasters to receive future incentive auction payments has made it much more difficult, if not impossible, for A Block licensees to enter into voluntary relocation agreements with Channel 51 broadcasters."¹⁷ Industry stakeholders have sounded a common theme that the upcoming incentive auction has "had the unintended effect of incentivizing broadcasters to act in ways that . . . make it more difficult for LTE Band 12 operators to relocate interfering Channel 51 broadcasters."¹⁸ Triad remains concerned that the prospects for voluntary relocation of Channel 51 broadcasters has been reduced due to the

¹⁶ In the Matter of Expanding the Economic Opportunities Of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, Docket No 12-268, FCC 12-118 released October 2, 2012.

¹⁷ Letter from Michele C. Farquhar to Marlene H. Dortch, Secretary, RM-116262, at 2 (filed Jun. 21, 2011).

¹⁸ United States Cellular Reply Comments, RM-11626, at 5 (filed May 12, 2011). In fact, Triad is aware of a circumstance where a broadcaster who had sought *and obtained* Commission consent to relocate from Channel 51 to Channel 31 later sought permission to remain at Channel 51, presumably in an attempt to capitalize on the uniquely powerful position that Channel 51 licensees occupy. See Petition for Rulemaking of Southeastern Media Holdings, Inc., MB Docket No. 11-54, RM-11624 (filed Feb. 25, 2011).

incentive auction proposal, which will further delay the development of an A Block equipment ecosystem. The result has been that the interference resolution process has been distorted in a manner never envisioned by the Commission or Triad as an A Block licensee.

D. The Relief Requested is Consistent with Commission Precedent

Precedent indicates that the Commission has granted licensees relief from construction obligations in situations similar to those that now face Triad. As is discussed in greater detail below, the Commission has extended construction deadlines where equipment was unexpectedly unavailable, where equipment was unaffordably expensive, and where interference concerns curtailed the reasonable prospects for broad deployment over the impacted band. Each of these issues is present today in the A Block, making the extension of A Block construction deadlines warranted and fully consistent with Commission precedent.

As demonstrated above, Lower A Block licensees will be unable to procure cost-effective equipment that can provide a ubiquitous, interference-free mobile broadband service due to interoperability issues. The Commission previously has found that the inability of the licensee to procure appropriate equipment is beyond the control of the licensee, and therefore the requested relief is warranted. For example, in 2004 the Commission found that it was “not reasonable to fault licensees who obtained licenses and then faced unexpected” unavailability of equipment.¹⁹ As a result of the “scarce” equipment that “faced technical and economic challenges,” the Commission found that an extension of the construction deadlines for 220 MHz licensees was

¹⁹ Request of Warren C. Havens for Waiver or Extension of The Five-Year Construction Requirement for 220 MHz Service Phase II Economic Area and Regional Licensees, *Memorandum Opinion and Order*, 19 FCC Rcd 12994, ¶ 15 (2004) (“220 MHz Extension Order”).

warranted.²⁰ Similarly, in 2008, Local Multipoint Distribution Service (“LMDS”) licensees also “faced factors beyond their control, including difficulties in obtaining viable, affordable equipment” by the construction deadline, and their waiver was granted as a result.²¹ Most recently, in 2010, the Commission found that an extension of build-out requirements was justified in the event that necessary devices or equipment was largely unavailable, as the lack of this availability was a circumstance outside the control of the licensee.²² Not unlike these three situations, the market for Lower 700 MHz A Block devices also has not developed as

²⁰ *Id.* at ¶ 16.

²¹ *Applications Filed by Licensees in the Local Multipoint Distribution Service*, Memorandum Opinion and Order, 23 FCC Rcd 5894, ¶ 25 (WTB 2008) (“*LMDS Extension Order*”). The circumstances faced by A Block licensees is nearly identical to that faced by the providers who were granted relief in the *LMDS Extension Order*, and entirely distinguishable from the Commission’s recent decision in the *T-Mobile LMDS Order*. *T-Mobile Licensee, LLC Requests for Extension of Time, or in the alternative, Limited Waiver of Substantial Service Requirements for 16 Local Multipoint Distribution Service Licenses*, Memorandum Opinion and Order, DA 12-1608 (rel. Oct. 10, 2012) (“*T-Mobile LMDS Order*”). T-Mobile was one of the licensees that initially received an extension in the *LMDS Extension Order* because all of the LMDS licensees faced circumstances, like equipment constraints, that were beyond their control. *Id.* at ¶¶ 5-6. In the *T-Mobile LMDS Order*, however, T-Mobile argued that it should be granted an additional extension because market conditions did not turn LMDS into an alternative backhaul technology and because T-Mobile spent nine months seeking regulatory approval for a transaction with AT&T, which caused it to put LMDS development on hold. *Id.* at ¶ 7. The Commission noted that other LMDS licensees were able to meet the build-out deadline and did not need another extension. *Id.* at ¶ 11. The Commission determined that the factors T-Mobile cited as reasons for an extension were business decisions within T-Mobile’s control, and “therefore, not an appropriate basis for regulatory relief.” *Id.* at ¶¶ 10-13. However, the hurdles faced by A Block licensees are not business decisions at all, but unforeseen factors – like continued Channel 51 interference and equipment unavailability – that are entirely beyond their control. Just like the original LMDS licensees, A Block licensees face “difficulties in procuring the basic equipment necessary for LMDS operations . . . stemming from the state of the market.” *Id.* at ¶ 6. To be sure, unlike the circumstances surrounding the *T-Mobile LMDS Order*, the spectrum-constrained A Block licensees would love the option to make a “business decision” to promptly deploy an unencumbered A Block for the benefit of their customers.

²² *Request of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, Order, 25 FCC Rcd 10097 (WTB 2010).

anticipated, and the unavailability of these necessary devices make deployment economically infeasible.

Commission precedent also supports an extension of performance benchmarks in cases where restrictive interference protections must be incorporated into construction across the band. In 2006, the WCS Coalition was granted a three-year extension “due to the uncertainty regarding the rules governing the operation of adjacent band SDARS [Satellite Digital Audio Radio Service] terrestrial repeater and the degree to which WCS operations will be protected from harmful interference.”²³ Consistent with the arguments presented here today by Triad, the WCS Coalition argued that this regulatory uncertainty hindered its ability to satisfy the necessary steps to fully deploy its network – i.e., equipment development, network design and facility deployment.²⁴ Similarly, if required to meet the June 13, 2013 construction benchmark, “the public interest would be ill-served by compelling [these] licensees to devote their resources to the construction of stop-gap, legacy systems merely to meet the July 21, 2007 construction deadline.”²⁵

The Commission also found an extension of construction timelines was warranted in situations where related rulemaking proceedings were pending before the Commission. In 1997, the Commission provided a blanket extension for Interactive Video and Data Service (“IVDS”) authorizations pursuant to its intent to initiate a rulemaking to consider significant revisions to

²³ *Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline*, Order, 21 FCC Rcd 14134, ¶ 5 (2006) (“*WCS Extension Order*”).

²⁴ *Id.*

²⁵ *Id.* at ¶ 12.

the IVDS rules.²⁶ The Commission believed that it would not be in the public interest to require licensees to comply with rules that were currently under Commission review.²⁷ Again in 2001, the Commission granted an extension of build-out requirements for Multipoint Distribution Service (“MDS”) BTA authorizations because, concurrent with the build-out deadline, the Commission also implemented service rule changes that granted MDS licensees the authority to offer new and innovative broadband services, instead of the anticipated video programming services.²⁸ As a result of these modifications, the Commission extended the MDS construction deadline not only in 2001, but again in 2003 due to the substantial revision in MDS rules and the impact that it would have on the MDS construction.

The Commission should apply this same rationale in the current situation. Although the Commission has initiated rulemakings on resolving the 700 MHz interoperability issue,²⁹ it is highly unlikely, if not impossible, that the Commission will complete this rulemaking in time for Triad to gain access to, test and launch devices to operate on its A Block spectrum by the build-out deadline of June 13, 2013. The same holds true for the Channel 51 interference issues which are inextricably intertwined with a number of proceedings, including the pending incentive auction *NPRM*.

²⁶ Requests by Interactive Video and Data Service Auction Winners to Waive the January 18, 1998, and February 28, 1998, Construction Deadlines, *Order*, 13 FCC Rcd 756, 758 (WTB 1998).

²⁷ *Id.*

²⁸ Extension of the Five-Year Build-Out Period for BTA Authorization Holders in the Multipoint Distribution Service, *Memorandum Opinion and Order*, 16 FCC Rcd 12593 (MMB 2001).

²⁹ *Promoting Interoperability in the 700 MHz Commercial Spectrum; Interoperability of Mobile User Equipment Across Paired Commercial Spectrum Blocks in the 700 MHz Band*, Notice of Proposed Rulemaking, FCC 12-31, WT Docket No. 12-69, RM-11592 (terminated) (rel. Mar. 21, 2012).

IV. CONCLUSION

This application demonstrates both the industry-wide issues with the A Block, and the unique issues that Triad has faced in the Markets. While Triad is making, and has made, meaningful efforts to provide service over the Triad Licenses, the lack of economies of scale in the equipment market, the lack of affordable, interoperable equipment, and the uncertainty of surrounding the resolution of the Channel 51 interference issues make it impracticable for Triad to meet its construction obligations under the current market conditions. Accordingly, for good cause shown, Triad requests a waiver of the construction/coverage requirements set forth in 47 C.F.R. § 27.14(g)(1), consistent with the requests set forth herein, and any other such relief as the Commission may deem proper.