

4) T 12-332  
FILED/ACCEPTED

NOV 13 2012

Federal Communications Commission  
Office of the Secretary

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Exhibit 1  
FCC Form 601

Cincinnati Bell Wireless, LLC (“CBW”) is seeking an extension or waiver of the interim build-out deadline set forth in Section 27.14 (g)(1)<sup>1</sup> of the rules and regulations of the Federal Communications Commission (the “FCC” or “Commission”) as applied to its lower 700 MHz A Block license under the call sign WQIZ531 (the “CBW Station”) serving the Dayton-Springfield Ohio Economic Area (BEA050) (the “Market”). The Market consists of the following eight Ohio counties: Shelby, Darke, Miami, Champaign, Clark, Preble, Montgomery, and Greene, which collectively encompass 3,558 square miles. In the absence of the requested relief, CBW would be obligated to provide signal coverage and offer service over at least 35 percent of the geographic area of the Market 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 Market.<sup>2</sup>

As is set forth in detail below, the requested relief is justified because (a) circumstances beyond CBW’s control prevent CBW 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 CBW acquired the CBW License, would make the strict application of the construction deadline inequitable, unduly burdensome and contrary to the public interest; and,

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<sup>1</sup> See 47 C.F.R. § 27.14(g)(1).

<sup>2</sup> See 47 C.F.R. § 27.14(g)(2). As noted herein, CBW has taken significant actions in an effort to proceed with the construction of the CBW Station. CBW 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, CBW also requests a waiver of the meaningful efforts standard for the same reasons that it seeks relief from the construction deadline.

(d) CBW has no reasonable alternative to seeking a waiver. CBW seeks an extension of the 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.<sup>3</sup>

**I. Statement of Pertinent Facts**

CBW is a subsidiary of Cincinnati Bell Inc. (“Cincinnati Bell”) which, among other things, is a full-service regional provider of data and voice communications services over wireline and wireless networks to businesses and consumers in portions of the central United States. CBW operates the wireless segment of the Cincinnati Bell business and provides advanced digital wireless voice and data communications services through the operation of a Global System for Mobile Communications/General Packet Radio Service (“GSM”) network with a 3G Universal Mobile Telecommunications System (“3G”) and 4G High Speed Packet Access+ (“HSPA+”) network overlay. Wireless services are provided to customers in licensed service territories, which include greater Cincinnati and Dayton, Ohio, and areas of northern Kentucky and southeastern Indiana.

CBW’s digital wireless network utilizes approximately 455 cell sites in its operating territory. CBW’s digital wireless network also utilizes 50 MHz of licensed wireless spectrum in the Cincinnati area and 40 MHz of licensed spectrum in the Dayton area.<sup>4</sup> As of December 31, 2011, CBW served approximately 459,000 subscribers, of which 311,200 were postpaid

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

<sup>4</sup> If CBW were able to utilize its A Block license, the total spectrum available to it in the Dayton market would be 52 MHz.

subscribers who are billed monthly in arrears and 148,000 of which were prepaid i-wireless subscribers who purchased service in advance.

CBW manages to compete successfully against the four national wireless carriers that operate in the same area by offering strong network quality, unique rate plans, attractive bundled wireless and wireline service plans and an extensive network of conveniently located retail outlets. CBW's unique wireless rate plans and products include its "Unlimited Everyday Calling Plan." which is available to any Cincinnati Bell local voice, wireless or business customer and Fusion WiFi, which utilizes Unlicensed Mobile Access technology for enhanced in-building wireless voice reception and faster rates of transmission compared to alternative wireless data services. Tests conducted in March 2010 demonstrated that CBW's 3G network provided the fastest transmission speeds in its markets.

In order to preserve this competitive advantage, CBW is investigating a network upgrade to a fourth generation ("4G") long term evolution ("LTE") network in order to increase network speeds and provide for a better user experience when a large quantity of data is passed through the wireless network, such as for streaming video applications and gaming applications. CBW acquired the 700 MHz A Block License in the Market at Auction 73 as part of this network upgrade plan.<sup>5</sup> CBW proposes to build and operate the CBW Station using LTE technology.

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<sup>5</sup> Notably, CBW did not bid only on 700 MHz A Block licenses. For example, the Round 3 results for Auction 73 show that CBW was the high bidder on the B Block license in CMA023 (Cincinnati, OH-KY-IN) and CMA592 (Ohio 8 – Clinton), and the Round 12 results show that CBW was the high bidder on the B Block license in CMA096 (Fort Wayne IN). However, AT&T was bidding aggressively on many B Block licenses, including those in the CBW operating territories, which drove those prices beyond the market price CBW was willing to pay. It is not uncommon for per pop auction prices in the markets in and around Cincinnati to be higher than average because the participation of a strong regional carrier such as CBW in an auction along with the nationwide carriers increases the competition for licenses. This

CBW currently has 97 cell sites in BEA050 (see Attachment 1) supporting services in the PCS and AWS bands and is in the process of upgrading its base stations with next generation equipment containing multi-service radio technology. The new equipment is expected to support GSM/EDGE, UMTS/HSPA, and LTE using the same radios. The updating of the network is underway and CBW is scheduled to undertake trials commencing before the end of 2012 pertaining to the rebanding of the AWS spectrum to facilitate handset acquisition. While CBW considered installing 700 MHz radio cards into its base stations in the Market as part of its upgrade process, for the reasons set forth in detail below, that would be a useless act.

Under the Commission's rules, 700 MHz A Block licensees are required to meet a minimum desired signal-to-undesired signal ("D/U") ratio with respect to proximate full power Class A television stations operating on UHF Channel 51 in order to avoid the potential for harmful interference.<sup>6</sup> In effect, this rule imposes a 60 mile exclusion zone surrounding each Channel 51 station. With specific reference to the CBW Station in the Market, this exclusion zone effectively prevents deployment in the absence of cooperation from or agreement with the Channel 51 licensee. As shown in the map attached hereto as Attachment 2, the entire licensed coverage area of the CBW Station is contained within the Channel 51 exclusion zone for Dayton, Ohio-based UHF television station WKEF (the "Channel 51 Station") licensed to Sinclair Broadcasting Group, Inc. ("Sinclair"). This means, from a geographic perspective, that **100 percent** of CBW's licensed territory – the entire 3,558 square miles – is unusable for the wireless

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phenomenon is verified by the overall Auction 73 results which indicate that AT&T paid a higher per pop price for the B Block licenses in CMA040 than the average of per pop prices paid for B Block licenses nationwide. This was a factor in the final outcome which resulted in CBW being the high bidder on the lower 700 MHz A Block license in the Market.

<sup>6</sup> See 47 C.F.R. § 27.60.

broadband that CBW plans to provide. The Commission adopted stringent performance requirements, including reserving the right to impose a reduction in the size of the licensed area, to ensure that licensees “put this spectrum to use throughout the course of their license terms and serve the majority of users in their license areas.”<sup>7</sup> Unfortunately, despite CBW’s desire to serve the users in its licensed area, given that the mid-term and end-of-license-term build-out requirements obligate 700 MHz licensees to cover 35 and 70 percent respectively of the geography of the Market, the exclusion zone from the Sinclair Channel 51 Station renders it impossible for CBW to provide a commercially viable service in time to meet the interim build-out requirement, and, perhaps the ultimate build-out requirement under current conditions.<sup>8</sup>

To address this situation, CBW initiated and is engaged in a dialogue with Sinclair to explore possible resolutions of the interference problem. Specifically, while making clear that it is not seeking to foreclose the discussion of any possible approach to resolving the problem, CBW asked Sinclair to consider (a) a possible modification of the Sinclair Channel 51 Station license to specify a comparable channel other than Channel 51 in exchange for reimbursement of all reasonable expenses associated with the modification; or (b) an agreement by Sinclair to discontinue its over-the-air transmissions on Channel 51 if the FCC would allow it to retain its cable retransmission and other licensee rights, including any and all rights in the upcoming incentive auctions. While reserving judgment on its willingness to change channels if an alternate channel can be found, Sinclair recommended as an initial step that CBW engage the

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<sup>7</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, ¶ 154 (2007).

<sup>8</sup> See 47 C.F.R. § 27.14(g)(2).

consulting radio engineering firm of Carl T. Jones to do a channel search, which CBW has done at its own cost.

At this point, no comparable alternative channel has been found for Sinclair, and CBW has no assurance that Sinclair will be willing to change channels even if one is found. Yet, the construction deadline continues to approach. In the meantime, other external factors beyond the control of CBW have further hampered the efforts of CBW to roll out a commercially viable lower band 700 MHz A Block service. CBW purchased the CBW License 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 is not currently interoperable with the frequency bands used on CBW's network. 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 non-nationwide carrier that only operates in a single central region of the United States, national roaming is a key factor to CBW in its service plan. CBW is member of the Competitive Carriers Association ("CCA"),<sup>9</sup> an industry group that has been a staunch advocate for interoperability on behalf of its many impacted members. CCA has filed with the

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<sup>9</sup> CCA was formerly known as the Rural Cellular Association, or RCA.

Commission a Petition for Extension of Time (the “CCA Petition”) on behalf of all Lower 700 MHz A Block licensees, which sets forth the arguments favoring a blanket extension of the A Block build-out timelines until two years after the interoperability situation in the Lower 700 MHz Band has been resolved. CBW strongly supports an extension on these grounds, and incorporates here by reference the attached CCA Petition and all legal and policy arguments made therein in support of the relief that CBW seeks here.

In its effort to exhaust all service options, CBW also has explored the possibility of utilizing advanced RF carrier aggregation technology that is expected to be available as part of a forthcoming upgrade of the LTE Advanced standard.<sup>10</sup> Carrier aggregation technology is designed to allow LTE networks to provide seamless LTE service while operating over multiple frequency bands. Conceivably, this technology could allow CBW to integrate 5 MHz of downlink spectrum from its 700 MHz A Block license to provide additional downstream capacity on its LTE network, while leaving the 5 MHz uplink channel (adjacent to Channel 51) vacant pending a resolution of Channel 51 interference issues.<sup>11</sup> Unfortunately, even if carrier aggregation technology is ultimately able to offer a technically feasible use of a portion of CBW’s A Block spectrum, the technology is not expected to be available in time to meet the interim June 13, 2013 build-out deadline. Currently, the carrier aggregation technology standards for Band Classes 12 and 4 are in the working group phase at 3GPP. Based on the

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<sup>10</sup> Although the LTE Advanced Standard, including carrier aggregation technology, was finalized earlier this year, the specifications for carrier aggregation using Bands 12 and 4 – necessary to support a CBW deployment – have not been finalized at this time.

<sup>11</sup> Even if carrier aggregation technology could theoretically provide an interim solution (which is unlikely given its long deployment timeline), the public interest is not served by forcing carriers to abandon half of the available A Block spectrum for the sake of meeting an interim build-out date, particularly during a well-documented spectrum crunch.

current timetable, work is not scheduled to be completed on this item until December 2012.

And, equipment manufacturers ordinarily require at *least* one year before making newly-standardized features available for commercial use (with mobile devices requiring even longer lead times). The mid-term build-out deadline CBW is facing will be long past before a carrier aggregation technology solution is viable.

**II. 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 CBW is seeking.

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

CBW has no choice but to comply with the interference standards that are set forth in the FCC rules and there is no regulatory requirement that the Channel 51 licensee in the Market, Sinclair, relocate to another channel or discontinue its operations in the Market. These facts, coupled with the circumstance that 100% of the Market falls within the Channel 51 interference

exclusion zone, means that it is *impossible* for CBW to satisfy the construction standard in a commercially viable manner unless it receives the cooperation of a third party over which it has no control. While CBW continues to search for engineering alternatives, none have yet been found and CBW has no assurance that Sinclair will accept any technical alternative that might emerge.

Similarly, the entire interoperability problem has arisen due to actions by third parties that are beyond CBW's control. The standard setting body came up with the Band Class 17 classification that has balkanized the 700 MHz band, and AT&T and Verizon have 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 regional carrier such as CBW has no ability to alter on its own.

Notably, CBW could not have reasonably anticipated the situation it finds itself in. While CBW was aware of the obligation to protect Channel 51, the DTV transition was in process and CBW expected the FCC and the industry to work together to address this interference issue. CBW also expected the entire wireless industry to work together to develop an interference solution that would promote a robust interoperable 700 MHz band. CBW 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, CBW's unenviable and unexpected position of having its entire A Block licensed area still enveloped within the Channel 51 exclusion zone, and the substantial interoperability and equipment availability obstacles CBW faces as a 700 MHz A Block licensee, justify the requested relief because CBW 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 prevent carriers from warehousing scarce spectrum. The substantial public service record of CBW clearly indicates that CBW is devoted to providing service to the public. The simple truth is that CBW bought the 700 MHz spectrum in the hope of using it to meet present needs for service. This is not a situation where a carrier has acquired spectrum that it is able to utilize and has made a tactical, economic or strategic business decision to delay system implementation. As noted above, the failure to construct is due to external factors that CBW could not control.

In fact, failing to grant the extension would actually undermine the purpose of the rule. The substantial existing infrastructure that CBW has in service in the Market puts CBW in the best possible position to initiate service to the public promptly if and when the Channel 51 interference problem is solved and interoperable handsets are available. Shortening the license term or recapturing some or all of the Market 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 are certain unique and unusual circumstances presented here that would render it fundamentally unfair to strictly enforce the interim construction deadline against CBW. 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.<sup>12</sup> The impact of these actions is discussed in greater detail below.

In the case of the Market, no new or additional Channel 51 operations were licensed subsequent to Auction 73. Nevertheless, the continued licensing of Channel 51 stations 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.

With respect to interoperability, this issue was first raised publicly in a petition filed with the Commission on September 29, 2009,<sup>13</sup> 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

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<sup>12</sup> 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.

<sup>13</sup> 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).

such auctions, which occurred with the passage of the Spectrum Act in 2012.<sup>14</sup> This led to the Commission's issuance of a *Notice of Proposed Rulemaking*<sup>15</sup> 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 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."<sup>16</sup> 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."<sup>17</sup> As detailed above, while CBW still

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<sup>14</sup> 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).

<sup>15</sup> 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.

<sup>16</sup> Letter from Michele C. Farquhar to Marlene H. Dortch, Secretary, RM-116262, at 2 (filed Jun. 21, 2011).

<sup>17</sup> United States Cellular Reply Comments, RM-11626, at 5 (filed May 12, 2011). In fact, CBW 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

is hopeful of the prospects of reaching an agreement with Sinclair, to date no agreement has been reached. CBW remains concerned that the prospects for voluntary relocation of Channel 51 broadcasters has been reduced due to the incentive auction proposal. In effect, the interference resolution process has been distorted in a manner never envisioned by the Commission or CBW as the 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 CBW. 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 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.<sup>18</sup>

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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).

<sup>18</sup> 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,

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 warranted.<sup>19</sup> 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.<sup>20</sup> 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

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*Memorandum Opinion and Order*, 19 FCC Rcd 12994, ¶ 15 (2004) (“220 MHz Extension Order”).

<sup>19</sup> *Id.* at ¶ 16.

<sup>20</sup> *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.

this availability was a circumstance outside the control of the licensee.<sup>21</sup> Not unlike these three situations, the market for Lower 700 MHz A Block devices also has not developed as 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. 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.”<sup>22</sup> Consistent with the arguments presented here today by CBW, 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.<sup>23</sup> Similarly, if required to meet the June 13, 2013 construction benchmark, the Lower A Block licensees will be required to deploy their network under strict technical specifications to reduce the potential for interference with Channel 51. Such technical restraints will ultimately hinder the ability of CBW to effectively develop its network, and will result in limited deployment.

The Commission also found an extension of construction timelines was warranted in situations where related rulemaking proceedings were pending before the Commission. In 1997,

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<sup>21</sup> *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).

<sup>22</sup> *Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline*, Order, 21 FCC Rcd 14134, ¶ 5 (2006) (“*WCS Extension Order*”).

<sup>23</sup> *Id.*

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 the IVDS rules.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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,<sup>27</sup> it is highly unlikely, if not impossible, that the Commission will complete this rulemaking in time for CBW 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

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<sup>24</sup> 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).

<sup>25</sup> *Id.*

<sup>26</sup> 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).

<sup>27</sup> *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).

are inextricably intertwined with a number of proceedings, including the pending incentive auction *NPRM*.

### **III. Conclusion**

This application demonstrates both the industry-wide issues with the A Block, and the unique issues that CBW faces in the Market. CBW is currently engaged in significant efforts to upgrade its network in order to offer LTE to its customers, already has a significant network constructed in the Dayton market, and is anxious to see these issues resolved so that its 700 MHz A Block spectrum can be put to use. However, the complete encompassment of the CBW station contour by the Channel 51 interference exclusion zone, the lack of economies of scale in the equipment market, the lack of affordable, interoperable equipment, the uncertainty of voluntary relocation talks with WKEF, and the lack of any viable engineering solutions make it both economically impracticable and technically infeasible for CBW to meet its construction obligations under the current market conditions. Accordingly, for good cause shown, CBW 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.