

**Before the
Federal Communications Commission
Washington, DC 20054**

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| In the Matter of |) | WT Docket No. 13-10 |
| |) | File Nos. 4366187, 4359553, 4361591 |
| Cellular Service Area Boundary |) | |
| Extension Agreements |) | |

COMMENTS REGARDING PETITION FOR WAIVER

Wilkes Cellular, Inc., by its attorney, hereby comments upon AT&T's request for various waivers regarding AT&T's SAB extensions into Wilkes's market. In support whereof, the following is respectfully submitted:

1) In preparation of this filing undersigned counsel reviewed his e-mail with AT&T concerning the subject matter of AT&T's waiver request. The last e-mail undersigned counsel received from AT&T which could be found is dated February 14, 2011 and it states: "if you [Wilkes' undersigned counsel] don't think we are going to get a response before the end of this month, we would like to move forward with our waiver." That was the last Wilkes heard from AT&T on the matter until, as discussed below, July 2012. More than 1.5 years after the February 14, 2011 e-mail AT&T filed its subject waiver request stating that Wilkes "simply refuse[s] to negotiate SAB extension agreements with AT&T."

2) There is no requirement that a cellular carrier must negotiate SAB extensions. *See e.g., Bachow/Coastel, L.L.C., Complainant, v. GTE Wireless of the South, Inc., Defendant*, 15 FCC Rcd. 4484 ¶ 1 (Enf. Bur. 2000) (carrier lacking extension agreement required to modify system to withdraw unlawful extension). The reason for the extension denial is irrelevant as are arguments about why application of a different rule might be better for subscribers. But our purpose here is

not to object to AT&T's waiver request; undersigned counsel's January 25, 2011 e-mail to AT&T states that "I could not envision a situation" in which Wilkes would object to an AT&T waiver request. Our purpose is to provide Wilkes' version of the underlying facts as it appears that AT&T has presented facts in a manner intended to persuade more so than to inform and Wilkes is within its rights to present its view of the history.

3) In July 2012 Wilkes, through its engineering consultant, contacted AT&T for the purpose of frequency coordination for a system retune.¹ At that time AT&T requested another go at trying to get contour extension agreements executed. It is undersigned counsel's understanding that since that time AT&T and Wilkes have been exchanging draft SAB extension agreements.² Therefore, it is unclear to Wilkes why AT&T claims in its waiver request that Wilkes "refuse[s] to negotiate SAB extension agreements with AT&T."

4) Waiver Request, Exhibit C, asserts that AT&T was unable to obtain frequency information from Wilkes for frequency coordination purposes, but that "Wilkes did not respond." The first such request that AT&T made to undersigned counsel was in a December 17, 2010 e-mail in which

¹ On February 19, 2013 AT&T filed an extension of time request to provide additional time for AT&T to pursue extension agreement discussions with Verizon. In that extension of time request at page 1 AT&T states that "since release of the Public Notice, AT&T and Verizon Wireless have initiated discussions to negotiate extension agreements needed by both carriers from each other." It is not ascertainable from the extension request why AT&T is not seeking an extension of time for the Wilkes' comment filing period in light of the ongoing contour extension discussions nor is it ascertainable why the February 5, 2013 *Public Notice* lists the Verizon Wireless situation as having a "promise of success" when those discussions were initiated "since the release of the Public Notice."

² Even as of January 25, 2011 while Wilkes was drive testing to satisfy itself that AT&T's signal was not a problem, undersigned counsel expressed a continuing interest in "extension letters to finalize a solution along the border." But discussions ended at that time and more than 1.5 years later AT&T filed the subject waiver request.

AT&T stated: “Also - just wanted to see if you could help us work some Frequency Coordination with Wilkes also. I believe there have been some communications and requests in the past - but I don't believe they have been resolved. Are you the appropriate contact to handle frequency coordination?”³ Undersigned counsel is not aware of any prior requests, other than as reported in AT&T's December 2010 e-mail, but undersigned counsel responded that another person handled frequency coordination. Undersigned counsel's recollection, after reviewing the e-mails, is that was the first and only time the matter was brought to undersigned counsel's attention. Within several weeks AT&T stated that it would file for a rule waiver and it did so more than 1.5 years later.

5) It seems to undersigned counsel that AT&T is attempting to shine a bad light on Wilkes in an effort to promote its waiver request. That tactic is unnecessary in as much as the parties continue to discuss SAB extension agreements and in as much as undersigned counsel indicated in late 2010-early 2011 that Wilkes would not object to a waiver request filed by AT&T. Needless to say, Wilkes finds AT&T's approach somewhat troubling, but maybe AT&T can clarify in reply.⁴

Hill & Welch
1025 Connecticut Ave., NW #1000
Washington, D.C. 20036
202-321-1448
301-622-2864 (FAX)

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Respectfully submitted,
Wilkes Cellular, Inc.

Timothy E. Welch
Its Attorney

³ AT&T's first e-mails to undersigned counsel which counsel could locate were in the June 2010 time period. There does not appear to be a reference to frequency coordination that e-mail exchange.

⁴ Should the Commission grant the waiver request Wilkes reserves the right to require system modification and/or signal withdrawal if unacceptable interference were to arise from AT&T's operation otherwise the waiver grant would effectively modify Wilkes's license without notice and hearing, 47 C.F.R. § 1.87(a), 47 U.S.C. § 316(a)(1), and result in a license modification not requested by AT&T.

cc: FCC@BCPIWEB.com