

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

_____	)	
In the Matter of	)	
	)	
Request for Extension of Initial	)	WT Docket No. 12-332
Construction Requirements	)	
	)	
Service Rules for the 698, 746, 747-762	)	WT Docket No. 06-150
and 777-792 MHz Bands	)	
_____	)	

**AT&T, Inc.’s Request for Six Month Extension  
Of Interim Construction Benchmark  
For Certain 700 MHz B Block Licenses**

Pursuant to 47 C.F.R. §§ 1.3, 1.925 and 1.946, AT&T Inc., on behalf of its affiliates, hereby petitions for a brief, six-month extension of the interim construction buildout deadline in 47 C.F.R. § 27.14(g) for certain Lower 700 MHz B Block licenses.

**INTRODUCTION AND SUMMARY**

The Commission’s rules governing Lower 700 MHz B Block spectrum establish an interim construction deadline, which requires a licensee to achieve coverage and service to 35 percent of the geographic area of the license by June 13, 2013.<sup>1</sup> AT&T has made extraordinary investments to build out its B Block licenses across the country, and as a result, AT&T now offers Long Term Evolution (“LTE”) service to more than 200 million Americans and is on track to serve far more by the end of 2013. Although AT&T expects to meet the interim construction deadline for the vast majority of the 245 B Block licenses that it has held for more than one year, AT&T anticipates that it will fall just short of full compliance in as many as ten of those license

<sup>1</sup> 47 C.F.R. § 27.14(g).

areas as of the June 13 deadline, and AT&T respectfully requests a six-month extension of the interim construction deadline for those licenses.<sup>2</sup>

The Bureau may grant an extension under Rule 1.946(e) when the failure to meet the construction deadline is due to “causes beyond [the licensee’s] control.”<sup>3</sup> Such causes exist here. In some cases, temporary government moratoria or other restrictions have prevented AT&T from completing the deployment of cell sites. In other cases, AT&T has not yet received delivery of transport from its backhaul providers, often in mountainous or other hard-to-reach areas. In yet other cases, AT&T has been unable to procure the services of qualified third-party tower crews due to an unusual shortage currently afflicting the industry, as many different wireless broadband providers upgrade their networks to LTE all at the same time. AT&T has made substantial progress in deploying its network in license areas covered by this request and in many cases already serves a substantial percentage of the population, but delays in completing cell site deployments in outlying and remote areas will prevent it from meeting the full 35 percent geographic coverage and service requirements by June 13.

Under these unusual circumstances, a brief, six-month extension is in the public interest and will better serve the purposes of the Commission’s rules. The purpose of the buildout requirements is to encourage the use of the spectrum and to prevent “warehousing.” That is not a concern here: AT&T has made B Block deployment a priority, devoting extraordinary resources

---

<sup>2</sup> Specifically, AT&T is requesting an extension for nine B Block licenses for which there is a substantial likelihood that AT&T will not complete the necessary construction by the June 13 deadline. In some cases, AT&T is making this request out of an abundance of caution, because it is still possible that AT&T may meet the June 13 deadline for some of those licenses. As explained below, AT&T is also seeking an extension for one additional license in which AT&T will have deployed enough sites to meet the coverage requirement by the deadline, but for which it cannot yet turn up service because it must deploy additional cell sites to ensure that customers experience an appropriate quality of service. All ten licenses are listed in Appendix A hereto.

<sup>3</sup> 47 C.F.R. § 1.946(e)(1).

to using its B Block spectrum to provide LTE service. For many of the licenses at issue, AT&T will likely miss the four-year deadline only by a matter of weeks. Considering AT&T's extraordinary ongoing efforts, a brief extension will better promote the purposes of the rule.

Moreover, the Commission is obligated to apply its standards for extension in a nondiscriminatory manner.<sup>4</sup> On April 10, 2013, a large number of B Block licensees were granted a blanket six-month extension even though they had made no progress in complying with the construction deadline.<sup>5</sup> Those licensees were not required to make any factual showing to justify their lack of progress; to the contrary, an extension was granted to many B Block licensees that did not even ask for an extension. It would be discriminatory and unfair to deny AT&T a similar extension when it has made extraordinary efforts and progress toward meeting the deadline and has demonstrated causes beyond its control that have prevented it from completing the last measure of construction in some of the more difficult areas of its deployment.

## ARGUMENT

### **I. AT&T Should Be Granted A Brief, Six-Month Extension Under Rule 1.946 For The Small Number of Licenses At Issue.**

The Commission may extend a construction or coverage period of a wireless license “if the licensee shows that failure to meet the construction deadline is due to involuntary loss of site

---

<sup>4</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (the Commission “may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function . . . Sound administrative procedure contemplates waivers . . . only pursuant to a relevant standard . . . best expressed in a rule that obviates discriminatory approaches”); *see also Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (agency must explain why waiver is in the public interest “to prevent discriminatory application and to put future parties on notice as to its operation”).

<sup>5</sup> FCC, Public Notice, *Wireless Telecommunications Bureau Extends 700 MHz B Block Licensee Interim Construction Deadline Benchmark Deadline Until December 13, 2103*, DA 13-680 (rel. Apr. 10, 2013) (“*B Block Extension Notice*”).

or other causes beyond its control.”<sup>6</sup> There are unique circumstances and causes beyond AT&T’s control that justify a brief six-month extension for two small sets of licenses: (1) nine licenses for which AT&T may not complete the deployment of enough cell sites to ensure coverage to 35 percent of the geographical area of the license, and (2) one additional license where AT&T has deployed enough cell sites to meet the geographical coverage requirement but must deploy additional sites before it turns up service to ensure an appropriate quality of service.

The purpose of the interim buildout deadline is to encourage licensees to use the spectrum. The Commission adopted the interim construction deadlines pursuant to Section 309(j)(4)(B), which provides that the Commission may include performance requirements “to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment and rapid deployment of new technologies and services.”<sup>7</sup> In other words, the interim construction deadlines are designed to ensure that the winning bidders in an auction deploy networks to serve consumers rather than “warehouse” the spectrum.

There can be no such concerns about AT&T’s use of its B Block licenses. AT&T has made extraordinary efforts to meet the Commission’s construction deadlines for all 245 B Block licenses that it has held for more than one year.<sup>8</sup> As the Commission is well aware, reaching the interim construction target for any particular license area requires a wireless provider to

---

<sup>6</sup> 47 C.F.R. § 1.946(e)(1). Given that Rule 1.946 directly authorizes an extension of these deadlines, AT&T does not believe that it must seek a waiver of Rule 27.14(g). Nonetheless, if AT&T is required to seek such a waiver, AT&T hereby requests a waiver, which would be supported by the same factual circumstances described in this petition.

<sup>7</sup> 47 U.S.C. § 309(j)(4)(B).

<sup>8</sup> AT&T has already filed a request for a six-month extension pursuant to Rule 1.946(e) for certain of the B Block licenses it has held for less than one year. *See* AT&T Inc.’s Request for Six Month Extension Of Interim Construction Benchmark For Recently-Acquired 700 MHz B Block Licenses, WT Docket No. 12-332, filed May 10, 2013.

complete a very long list of intermediate tasks. For each LTE deployment,<sup>9</sup> AT&T must engage in network planning, secure necessary cell site locations, build or retrofit those cell sites, deploy the radios and integrate the cell site with the network, secure the necessary transport for backhaul, and perform network optimization and testing, among many other work items. A typical AT&T LTE cell site deployment requires more than 50 discrete jobs and tasks, many of which must be completed in conjunction with third-party vendors or service providers.

AT&T has invested billions of dollars to deploy LTE, and it has made rapid progress. AT&T recently announced that its LTE network already covers over 200 million POPs, and it expects to reach 90 percent of its planned 300 million POP LTE deployment by the end of 2013.<sup>10</sup> Moreover, AT&T has concentrated resources within the company to prioritize deployment of its B Block licenses to meet the interim deadlines. AT&T has given priority to Lower 700 MHz B Block licenses in the network planning process. AT&T has redeployed resources within the company (at the expense of other critical business objectives) to support B Block construction, and it has substantially increased the number of third-party crews working on the necessary cell sites (including the use of special incentive programs to provide additional compensation where necessary to attract qualified construction crews). AT&T has increased resources devoted to obtaining zoning approvals and negotiating with other providers for transport. And AT&T has used creative modifications to its normal deployment practices to shorten the overall time to complete the construction. Due to these extraordinary efforts, AT&T

---

<sup>9</sup> AT&T has deployed LTE service primarily on Lower 700 MHz frequencies, including B Block licenses.

<sup>10</sup> Press Release, AT&T Inc., Solid Earnings Per Share and Cash Flows, Strong Mobile Data Growth and Record U-verse Broadband Gains Highlight AT&T's First-Quarter Results (Apr. 23, 2013), <http://www.att.com/gen/press-room?pid=24091&cdvn=news&newsarticleid=36339&mapcode=corporate|financial>.

expects to meet the June 13, 2013 deadline for the vast majority of the licenses it has held for more than one year.

Despite these efforts, however, AT&T anticipates that it will fall just short of the coverage requirement in as many as ten of those license areas as of the June 13 deadline.<sup>11</sup> Now that AT&T has deployed an LTE network covering roughly 2 of every 3 Americans, its remaining efforts largely consist of deploying LTE in CMAs with smaller populations; indeed, CMA 348 is the highest ranked CMA in which AT&T is in danger of falling short of the coverage requirements. The substantial majority of the population in these CMAs is typically concentrated in an area that represents far less than 35 percent of the geographical area covered by the license. Thus, in most cases AT&T has already deployed LTE and is serving a significant number of customers in these license areas, but extending *coverage* out to 35 percent of the geography requires deployment in relatively remote areas with challenging physical environments and topographies.

The causes that are preventing AT&T from fully meeting the interim coverage requirements for these licenses fall into three broad categories. First, temporary government restrictions have prevented AT&T from completing the necessary cell sites for certain licenses.<sup>12</sup> In CMA 348, which encompasses the mountainous areas west of Steamboat Springs, Colorado, local authorities have instituted a moratorium on trenching due to the lingering snow levels on highways. In CMA 487, environmental regulations prevent AT&T from completing deployment of a cell site in Crow Wing County, Minnesota, because an osprey is currently occupying a nest

---

<sup>11</sup> AT&T is seeking an extension for the 10 license areas in which there is a substantial likelihood that it will fail to meet the interim construction deadline. AT&T is vigorously engaged in deployment in these areas, however, and it is possible that it may meet the June 13 deadline in some of these license areas.

<sup>12</sup> The call letters of the affected licenses are WQJU579 and WQJU606.

on the tower. AT&T must wait for the osprey and its offspring to leave the nest and begin their migration.

In a second category of license areas, AT&T has not been able to complete the necessary construction because it has not yet received delivery of transport from its backhaul providers.<sup>13</sup> Many of these areas are also very remote or mountainous, which has contributed to the delays. And, in a third category of license areas, AT&T has been unable to complete the necessary work because it has been unable to engage a sufficiently large number of qualified third-party crews (especially tower crews).<sup>14</sup> There is an unusual shortage of qualified crews in today's environment, because many different wireless broadband providers are deploying LTE networks (and constructing facilities to "densify" their existing networks) at the same time. Accordingly, even with AT&T's incentive and bonus programs to hire and retain tower crews, it has proven to be infeasible for AT&T to retain sufficient resources and meet the deadlines for every one of its B Block licenses.

AT&T is also seeking an extension for one additional license area that is located in the large San Francisco/Sacramento metropolitan area.<sup>15</sup> AT&T has already deployed enough cell sites in this license area to meet the interim geographic coverage requirement. The cell sites it has deployed, however, are located too sparsely in relation to each other to provide service that meets AT&T's internal quality of service standards, and therefore AT&T must deploy additional cell sites before it can turn up LTE service in this license area and offer it to consumers. The San Francisco Bay Area is one the most difficult areas in the nation in which to deploy new cell sites

---

<sup>13</sup> The call signs for the affected licenses are WQJU581, WQIZ622, WQJU614, WQJU621, and WQJU647.

<sup>14</sup> The call signs for the affected licenses are WQJU605 and WQIZ625.

<sup>15</sup> The call sign for the affected license is WQJU578.

given the density of the population, the high cost of real estate, and unusually severe legal obstacles in the zoning process due to various “green” laws and earthquake-related regulations. The unique difficulties carriers face in the San Francisco area in acquiring new sites have prevented AT&T from completing the additional construction it needs to fill in these “coverage holes” and to begin offering service.

Under these circumstances, strict enforcement of the deadlines would not serve the purposes of the rule, and therefore a brief, six-month extension is warranted. As the Commission’s rules provide, strict application of the deadline would be inequitable when, as here, the licensee is using the spectrum extensively to provide service and has made extraordinary efforts to meet the deadline but has been prevented from fully meeting the requirements due to “causes beyond its control.”<sup>16</sup> The Commission’s interim construction requirements are designed to ensure that the winning bidders in an auction actually *use* the spectrum to provide service to consumers, and AT&T is clearly fulfilling that purpose by making every effort to deploy the spectrum to offer LTE service to its customers. Indeed, AT&T has already made substantial progress in these license areas, is already offering service to many consumers, and in some cases will likely miss the interim deadline by only a matter of weeks. In light of AT&T’s ongoing efforts and the progress it has made, a brief extension would better serve the purposes of the rule.

---

<sup>16</sup> 47 C.F.R. § 1.946(e)(1); *see also* 47 C.F.R. § 1.925(b)(3)(ii) (waiver may be granted when “[i]n view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative”).

**II. Given That Other B Block Licensees Have Received Relief Without Making Any Factual Showing, Denial of the Requested Extensions Here Would Be Arbitrary And Discriminatory.**

Equally important, denial of an extension for AT&T would be discriminatory in light of the extensions already granted to other B Block licensees. The Administrative Procedure Act requires the Commission to apply its standards for an extension in a manner that is not arbitrary or discriminatory.<sup>17</sup> Consistent standards are necessary to prevent the “danger of arbitrariness.”<sup>18</sup>

On April 10, 2013, a blanket six-month extension of the interim construction deadline was granted to almost every B Block licensee in the country. The Bureau noted that “[c]ertain wireless providers” had sought a rulemaking on interoperability issues in the Lower 700 MHz band, and had “assert[ed]” that the development of two band classes (Bands 17 and 12) had “hampered” their ability to have access to “a wide range” of advanced devices.<sup>19</sup> The Bureau recited that “[s]ome Lower 700 MHz band licensees” had “assert[ed]” that interoperability issues had “impeded” their ability to satisfy the interim construction deadline and had requested an extension.<sup>20</sup> Stating only that it was reviewing these issues and with no further explanation or analysis, the Bureau “f[ound] it in the public interest” to grant an extension on its own motion to “all” active B Block licensees until December 13, 2013, except (1) Lower 700 MHz B Block licensees that filed notification of construction for any of their licenses on or before April 9, 2013 (*i.e.*, AT&T and U.S. Cellular), and (2) B Block licensees that filed comments in the

---

<sup>17</sup> *WAIT Radio*, 418 F.2d at 1159 (Commission “may not act out of unbridled discretion or whim in granting waivers any more than in any other aspect of its regulatory function . . . Sound administrative procedure contemplates waivers . . . only pursuant to a relevant standard . . . best expressed in a rule that obviates discriminatory approaches”); *see also Northeast Cellular Tel. Co.*, 897 F.2d at 1166 (D.C. Cir. 1990) (agency must explain why waiver is in the public interest “to prevent discriminatory application and to put future parties on notice as to its operation”).

<sup>18</sup> *See, e.g., NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008).

<sup>19</sup> *B Block Extension Notice* at 1.

<sup>20</sup> *Id.* at 1-2.

interoperability rulemaking proceeding that “did not claim” that interoperability issues had “impeded” their ability to take advantage of economies of scale in order to build out their networks (*i.e.*, AT&T and Verizon Wireless).<sup>21</sup>

In granting these extensions, the Bureau made no factual findings and did not require extensive factual showings. Indeed, in many cases there was no factual showing at all, because many of the B Block licensees that were given an extension *did not even ask* for one. Nor did each licensee explain how its stated basis for an extension actually impeded its ability to meet the construction requirements. The interoperability proceeding concerns *A Block* licensees, who argue that they have been “hampered” in their ability to obtain Band 12 devices for use on *A Block* spectrum. Many of the B Block licensees that were given extensions do not hold any *A Block* spectrum, and therefore could have met the buildout deadline by using either Band 17 or Band 12 devices. Moreover, U.S. Cellular, one of the principal *A Block* licensees that is arguing for an interoperability mandate, was nonetheless able to meet the buildout deadline for all of its B Block licenses. U.S. Cellular’s compliance was noted and it was exempted it from the extension, but other advocates of an interoperability mandate were granted an extension without requiring any explanation as to why they could not have made similar efforts to meet the construction deadlines.

Having granted these extensions under such a standard, it would be discriminatory to deny AT&T a similar extension. Indeed, given that the purpose of the buildout deadlines is to encourage the use of the spectrum, such an outcome would be backwards. AT&T has made extraordinary investments to use its B Block licenses to provide LTE service, and as result AT&T now uses that spectrum to offer LTE service to over 200 million Americans. The B

---

<sup>21</sup> *Id.* at 2.

Block licensees that received an extension, by contrast, have not constructed any facilities at all, even though U.S. Cellular dramatically proves that these licensees could be using their spectrum to provide LTE service *today*, regardless of how the Commission may ultimately resolve the issues in the interoperability rulemaking proceeding. AT&T has met the requirements for an extension under any reasonable interpretation of the Commission’s rules, but it would be discriminatory to deny a similar waiver to AT&T merely because it was unable to complete the last small increment of construction due to causes beyond its control in more difficult areas of its nationwide buildout.<sup>22</sup>

Finally, AT&T respectfully requests that this extension request be granted promptly. Given the imminence of the extended deadline, the Bureau should expeditiously grant the requested extension, to provide regulatory certainty and to permit AT&T to make any necessary adjustments in its planning so that it can maximize the chance that it can meet the extended deadlines.

---

<sup>22</sup> See, e.g., *Airmark Corp. v. FAA*, 758 F.2d 685, 692 (D.C. Cir. 1985) (agencies considering waivers may not “arbitrarily appl[y] different decisional criteria to similarly situated carriers”); *Mary Carter Paint Co. v. FTC*, 333 F.2d 654, 660 (5<sup>th</sup> Cir. 1964) (Brown, J., concurring) (“[t]here may not be a rule for Monday, another for Tuesday, a rule for general application, but denied outright in a specific case”), *rev’d on other grounds*, 86 S.Ct. 219 (1965).

## CONCLUSION

For the foregoing reasons, the Bureau should grant AT&T a six-month extension of the B Block interim construction deadline for the B Block licenses described in this petition.

Respectfully submitted,

David L. Lawson  
James P. Young  
Sidley Austin LLP  
1501 K Street, N.W.  
Washington, D.C. 20005  
(202) 736-8000

/s/ Robert Vitanza  
Robert Vitanza  
Michael P. Goggin  
Gary L. Phillips  
Peggy Garber  
AT&T Inc.  
1120 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
(202) 457-2055

*Attorneys for AT&T Inc.*

June 12, 2013

**APPENDIX A**

<b>License Call Sign</b>		<b>License Name</b>	<b>CMA#</b>
1	WQJU578	CA 4 – Madera	339
2	WQJU579	CO 1 – Moffat	348
3	WQJU581	CO 6 – San Miguel	353
4	WQJU605	MN 3 – Koochiching	484
5	WQJU606	MN 6 – Hubbard	487
6	WQIZ622	MN 7 – Chippewa	488
7	WQIZ625	MN 10 – Le Sueur	491
8	WQJU614	NM 1 – San Juan	553
9	WQJU621	ND 1 – Divide	580
10	WQJU647	WI 5 – Pierce	712