

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Wireless Telecommunications Bureau Seeks)	WT Docket No. 14-17
Comment on Request by Cricket License)	
Company for Waiver of 27.60 for)	
Lower 700 MHz A Block License)	

REPLY COMMENTS OF COMPETITIVE CARRIERS ASSOCIATION

Competitive Carriers Association (“CCA”) hereby submits these reply comments in the above-captioned proceeding in support of the request for waiver of Section 27.60 of the Commission’s rules filed by Cricket License Company (“Cricket”). The waiver is intended to facilitate the deployment of wireless broadband service using the Lower 700 MHz A Block license to serve the Chicago-Gary-Kenosha, IL-IN-WI basic economic area (“Chicago EA”) (the “Cricket License”). This much-needed deployment is in the public interest and provides the Commission with an excellent opportunity to clarify the role and responsibility of broadcasters in negotiating potential interference issues with wireless service providers both prior to and following the incentive auction.

CCA represents the interests of more than 100 competitive wireless carriers, including rural and regional carriers as well as national providers. Many of CCA’s members hold Lower 700 MHz A Block spectrum licenses, and CCA has a keen interest in supporting the resolution of purported interference or other technical issues in a manner that facilitates the full use of these licenses for deployment of next generation mobile wireless services. For example, CCA played an intricate role in achieving a transformative industry compromise to promote device

interoperability in the Lower 700 MHz band.¹ And CCA has closely monitored developments associated with possible interference issues between Lower 700 MHz A Block licensees and television broadcasters operating on Channel 51.

In this case, the Commission should not allow the incumbent Channel 51 licensee to unreasonably prohibit the deployment of wireless broadband services by an adjacent wireless licensee, when such services are manifestly in the public interest and both services can technically coexist. As Leap's petition and accompanying technical analysis show, LTE operations would only impact approximately 20 viewers in the Chicago area watching the FOX station's over-the-air signal. Despite this minimal impact, FOX has refused to resolve this potential interference issue. As T-Mobile correctly identifies, Cricket's waiver request presents an opportunity for the Commission to provide clarity with respect to the need for all spectrum users to ensure that scarce spectrum resources are employed efficiently. Here, where Cricket or a successor carrier can put 700 MHz A Block spectrum to use in a densely populated and highly spectrum constrained market without causing harmful interference to the incumbent Channel 51 broadcaster, the Commission should promptly grant Cricket's waiver request.

I. GRANT OF CRICKET'S WAIVER REQUEST IS IN THE PUBLIC INTEREST

Cricket's waiver request appropriately highlights as a central public interest factor the increasing scarcity of spectrum available to support wireless broadband services in Chicago. By contrast, FOX Television Stations, Inc. ("FOX") and the National Association of Broadcasters ("NAB") deny that access to broadband spectrum in congested urban areas such as Chicago is

¹ See *Promoting Interoperability in the 700 MHz Commercial Spectrum, Requests for Waiver and Extension of Lower 700 MHz Band Interim Construction Benchmark Deadlines*, WT Docket Nos. 12-69, 12-332, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122 (2013).

even an issue that should be considered.² Such assertions should not be given credence. In 2010, the Commission acknowledged the looming spectrum crunch in the National Broadband Plan,³ particularly in dense urban areas including in Chicago,⁴ and Chairman Wheeler has made repeated statements regarding the need to address spectrum scarcity for wireless services.⁵ Moreover, Congress enacted the Spectrum Act with the clear goal of addressing expected spectrum shortfalls for wireless broadband use.⁶

Grant of Cricket's waiver request would facilitate the deployment of unutilized wireless spectrum when the demand for wireless services is at an all-time high and only expected to

² See Comments of FOX Television Stations, Inc., Licensee of WPWR-TV, WT Docket No. 14-17, at 8 (filed Mar. 4, 2014) ("FOX Comments") (claiming that Cricket has "show[n] no particular [spectrum] constraint in the Chicago [market] nor a pent-up demand for Cricket's wireless offering"); Comments of the National Association of Broadcasters, WT Docket No. 14-17, at 4 (filed Mar. 4, 2014) ("NAB Comments") (asserting that Cricket's evidence of a "purported lack of spectrum nationally, as well as severe spectrum constraints in Chicago in particular" are insufficient evidence to support grant of Cricket's waiver request).

³ Federal Communications Commission, Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, at 77 (2010) ("National Broadband Plan") (issuing warnings of dire consequences "if government does not make spectrum available to enable [wireless broadband] network expansion and technology upgrades").

⁴ National Broadband Plan at 85, 93 (recognizing that increased spectrum demands are particularly acute in urban areas and identifying these areas as particularly prone to high congestion).

⁵ See, e.g., Tom Wheeler, Chairman, Federal Communications Commission, Prepared Remarks at the Computer History Museum, Mountain View, California, at 3 (Jan. 9, 2014), http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0117/DOC-325054A1.pdf ("Wheeler Computer History Museum Remarks") (explaining that the ways the Commission historically has allocated spectrum "creat[es] unnecessary and artificial scarcity of [spectrum]" and that the Commission "need[s] to bring more spectrum capacity to market ... and fast"); (Tom Wheeler, *Let the Spectrum Market Work*, MOBILE MUSINGS (Jan. 11, 2011), <http://www.mobilemusings.net/search?updated-max=2011-01-28T16:16:00-05:00&max-results=3&start=21&by-date=false> (advocating the use of spectrum auctions "quickly so we can nip the spectrum crunch in the bud, spur innovation, stimulate investment, create jobs, and continue American leadership in wireless service").

⁶ H.R. Rep. No. 112-399, at 136 (2012) (Conference Report).

become more acute. Such deployment therefore would have obvious public interest benefits—and yet, the commenters representing broadcast interests claim that the *only* public interest considerations at issue are those related to the preservation of over-the-air broadcasting. FOX asserts that the only “public interest at issue here is protecting the signal of WPWR-TV,”⁷ while NAB claims that the inability to utilize the Cricket License to deploy wireless broadband services “is *not relevant* to the question of whether Cricket’s waiver would serve the public interest.”⁸

The broadcasters thus would have the Commission completely ignore the interests of American consumers who are clamoring for additional wireless capacity. This tilts the policy balance to an absurd extreme. Chairman Wheeler recently described a “fourth Network Revolution that is being led by wirelessly pervasive processing power.”⁹ During this “revolution,” incumbent television broadcasters should remain entitled to have their services protected, but these legacy licensees are not and should not be entitled to the absolute protection that FOX and NAB claim here. This is especially so when all evidence today points to wireless broadband as the highest and best use of the spectrum in this frequency range.¹⁰ The

⁷ FOX Comments at 8.

⁸ NAB Comments at 4 (emphasis added).

⁹ Tom Wheeler, Chairman, Federal Communications Commission, Prepared Remarks of FCC Chairman Tom Wheeler, GSMA Mobile World Congress, Barcelona, Spain, at 1 (Feb. 24, 2014).

¹⁰ *See, e.g.*, National Broadband Plan at 89 (explaining that the market value of spectrum currently allocated for broadcast television is significantly below the value for spectrum used for mobile broadband, despite the fact that they have similar propagation characteristics); Thomas W. Hazlett, *If a TV Station Broadcasts in the Forest ...: An Essay on 21st Century Video Distribution*, at 13 (May 19, 2011), <http://www.americantelevisionalliance.org/wp-content/uploads/2011/05/TV-Future-TWH-5-19-111.pdf> (explaining that use of 600 MHz spectrum for “one-way, high-powered broadcasting service ... yields far less value” than if it were repurposed for wireless broadband service). *See also* Wheeler Computer History Museum Remarks at 3

Commission should reject the broadcasters' assertions and instead consider Cricket's waiver request in conjunction with the Commission's current spectrum policy goals, which prioritize using further allocation, spectrum sharing, and in the case of the incentive auction, repurposing some of the broadcast spectrum, to promote more advantageous wireless broadband uses.¹¹ To that end, it should also be noted that there is significant support in the incentive auction record for prioritizing repacking such that Channel 51 is cleared *first*; therefore, the effects of Cricket's waiver request on the current licensee will be temporary.

In addition, grant of the waiver request would enable the future holder of the Cricket License to avoid the build out delays and obstruction that Cricket appears to have experienced to date, thereby expediting the ultimate deployment of wireless broadband services on this spectrum. FOX and NAB offer no reasonable basis on which to deny Cricket's request to make the requested waiver transferrable. On the other hand, Cricket makes a compelling showing that even assuming a successor carrier has greater coverage and more subscribers, the interference potential is, at most, *de minimis*. Moreover, the critical shortage of spectrum in the Chicago area and the profound public interest need for additional capacity for wireless broadband services will continue to exist, regardless of who holds the Cricket License.

(stating that “[s]lavishly sticking to analog concepts of spectrum allocation can become, in the digital age, a government-imposed chokepoint that burdens competition and innovation” and that, “[w]hen Congress created the Broadcast Incentive Auction in 2012, it was recognizing that spectrum allocated on analog technical principles for analog business models may no longer be preferable for businesses in the digital age”).

¹¹ The Commission should likewise dismiss NAB's specious argument that there is no spectrum scarcity in the Chicago EA because of Verizon's decision to sell the Lower 700 MHz A Block license to Cricket in the first instance. *See* NAB Comments at 4. The fact that Verizon made a business decision to sell the license two years ago—while retaining significant amounts of spectrum in the Chicago area after the sale—is irrelevant to the overall state of the industry today.

II. GRANT OF CRICKET'S WAIVER REQUEST IS NECESSARY TO PROMOTE GREATER COOPERATION BETWEEN SPECTRUM USERS

Like T-Mobile, CCA is concerned that FOX has apparently refused to engage in good faith with Cricket to work toward a consensual arrangement that would allow the Cricket License to be put to beneficial use without notable harm to FOX's Channel 51 broadcast operations.¹² Indeed, FOX makes the provocative assertion that it is "under no obligation to engage with Cricket to explore potential solutions" that would enable deployment of services in the Lower 700 MHz A Block in Chicago.¹³ CCA agrees with T-Mobile's suggestion that the Commission should take the opportunity afforded by the current petition to provide much-needed clarification to all other similarly situated broadcasters regarding their regulatory obligations under Section 27.60.

As T-Mobile explained in its comments, "good faith negotiations between spectrally adjacent services are essential to promoting interference-free communications services."¹⁴ Based on Cricket's demonstration of the *de minimis* potential for harmful interference in the Chicago EA, FOX's apparent refusal to engage in good faith discussions seems to have been the primary roadblock to Cricket's deployment of service under the Cricket License to date. As additional Lower 700 MHz A Block licensees begin planning deployments on that spectrum in the wake of the industry-negotiated solution to interoperability, these licensees would also benefit from guidance provided by the Commission on the duties of Channel 51 licensees to negotiate purported interference issues in good faith.

¹² See Comments of T-Mobile USA, Inc., WT Docket No. 14-17, at 2 (filed Mar. 4, 2014) ("T-Mobile Comments").

¹³ FOX Comments at 13.

¹⁴ T-Mobile Comments at 4.

Likewise, CCA agrees with T-Mobile that the grant of Cricket's waiver request presents an opportunity for the Commission to provide certainty to stakeholders in advance of the 600 MHz incentive auction.¹⁵ In particular, by confirming the obligation of *all* licensees to work cooperatively to facilitate the efficient use and deployment of scarce spectrum resources, the Commission would signal to broadcasters the importance of their involvement in resolving issues to enable adjacent wireless operations. Such confirmation also would provide greater certainty and incentives to broadcast licensees that have yet to decide whether to participate in the incentive auction. As CCA has emphasized in previous comments, the Commission should look holistically at all of its pending broadcast policies to increase certainty for broadcasters post-auction and ensure that these policies do not artificially distort market incentives for broadcasters to relinquish their spectrum or otherwise depress participation in the reverse auction.¹⁶ Accordingly, at a minimum, the Commission should confirm that Lower 700 MHz A Block licensees may rely on an engineering study of the type presented in Cricket's waiver request to avoid the need to obtain consent from an unwilling Channel 51 broadcast station.¹⁷

CONCLUSION

Granting Cricket's waiver request would enable the deployment of much needed additional wireless capacity in the spectrum-constrained Chicago market. It will also set appropriate expectations regarding broadcasters' obligations to engage in cooperative discussions with wireless carriers in a manner that will allow the public to realize benefits from both services. The Commission should therefore expeditiously grant Cricket's waiver request.

¹⁵ *Id.* at 6.

¹⁶ *See* Comments of Competitive Carriers Association, GN Docket No. 12-268, at 20 (filed Jan. 25, 2013).

¹⁷ *See* T-Mobile Comments at 7-8.

Respectfully submitted,

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