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

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

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

The National Association of Broadcasters ("NAB")[1] submits these comments in response to the *Public Notice* seeking comment on the request for a waiver of Section 27.60 of the Commission's rules by Cricket License Company, LLC ("Cricket").[2] Cricket's request fails to satisfy the standards for waiver of the Commission's rules, and thus must be rejected. Cricket understood when it acquired its license that it would be required to protect fully DTV operations in accordance with existing rules. Indeed, Cricket acquired its 700 A block license *four years* after it was originally auctioned, so it should have been well acquainted with any build-out challenges it might face. In essence, Cricket is not seeking a waiver, but rather a new rulemaking, as it disagrees with the Commission's existing standard. Moreover, Cricket acknowledges that it does not plan to build out the spectrum but that it plans to sell its license in the near future. Cricket thus effectively

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[1] The National Association of Broadcasters is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] *Wireless Telecommunications Bureau Seeks Comment on Request by Cricket License Company for Waiver of Section 27.60 for Lower 700 MHz A Block License*, Public Notice, WT Docket No. 14-17, DA 14-113 (rel. Jan. 31, 2014).

seeks to change the rules applicable to its license solely to allow it to sell that license for a higher price.

I. CRICKET'S WAIVER REQUEST FAILS TO SATSIFY THE STANDARD FOR A WAIVER OF THE COMMISSION'S RULES.

Section 1.925 provides that the Commission may grant a waiver of its rules if (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[3] Applicants seeking a waiver face a heavy burden, and must plead with particularity the facts and circumstances which warrant a waiver.[4] Cricket's request for waiver fails to satisfy this high standard.

A. The Underlying Purpose of the Rule is to Protect DTV Broadcast Operations.

Section 27.60 of the Commission's rules specifies that wireless service may operate in adjacent bands "only in accordance with the rules in this section to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 51 through 68."[5] The purpose of the rule, accordingly, is to protect viewers of existing DTV broadcast operations from harmful interference caused by wireless service deployed in adjacent frequency bands. The purpose of the rule cannot plausibly be served by a waiver that allows wireless

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[3] 47 C.F.R. § 1.925(b)(3).

[4] *See, e.g., In the Matter of County of Spartanburg, South Carolina*, Order, DA 14-205, ¶ 6 (rel. Feb. 19, 2014) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

[5] 47 C.F.R. § 27.60.

operations to disrupt public reception of DTV broadcast operations. Indeed, the rule was developed specifically to prevent such wireless operations.

Cricket attempts to rewrite the waiver standard by stating that its request "would not frustrate the underlying purpose of the rule."[6] At the outset, we note that the waiver standard is not whether the operation would frustrate the rule; but rather, whether the application of the rule in this particular instance would, in fact, frustrate its purpose. The material difference is that a waiver should only be granted in this instance if the purpose of the rule – protecting interference to DTV stations – will be undermined by applying it in this instance. Here, applying the rule is essential as it limits interference to a DTV station. Cricket has not made any showing that the purpose of the rule would in fact be furthered as opposed to frustrated by granting its request

The record shows that the rule was implemented specifically for cases such as these. Fox Television Stations, Inc., the licensee of WPWR-TV, has submitted a technical study demonstrating that the effects of a waiver will prove unacceptably disruptive to viewers of WPWR-TV. Cricket may attempt to claim that the interference is *de minimis*, but Fox's filing demonstrates conclusively otherwise.

B. Cricket Fails to Demonstrate that a Wavier Would Serve the Public Interest.

Cricket's request contains only general assertions regarding the purported public interest benefits of a waiver. Cricket's public interest showing can be distilled into three arguments: (1) there is a shortfall of spectrum that is particularly acute in the Chicago market where Cricket seeks to provide service; (2) Cricket cannot deploy service using

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[6] Petition of Cricket License Company, LLC for a Waiver of DTV Protection Criteria, WT Docket No. 14-17, 5 (filed December 6, 2013) ("Cricket Petition")

Lower 700 MHz A Block spectrum because of Commission rules; and (3) Cricket provides a uniquely valuable service because "Cricket's core focus has been serving consumers in urban areas who may not be able to qualify for or afford wireless or wireline services from larger carriers."[7]

Cricket submits no evidence demonstrating any imminent public harm from an alleged lack of available spectrum in the Chicago market, nor identifies any specific immediate benefits that would flow from its waiver. Cricket provides only generic statements about a purported lack of spectrum nationally, as well as severe spectrum constraints in Chicago in particular.[8] Its contention that there are immediate spectrum constraints in Chicago is belied by the fact that Verizon, a company with far more subscribers to serve in Chicago than Cricket, just recently transferred the 700 MHz A block spectrum at issue to Cricket.

Even assuming that Cricket cannot deploy broadband service using this spectrum due to Commission rules protecting broadcast television service, that fact is not relevant to the question of whether Cricket's waiver would serve the public interest. Not only did all 700 MHz A block bidders know the rules at the time of the 2008 auction, but Cricket certainly knew the rules and their effect when it acquired the spectrum from Verizon in 2012. Indeed, Cricket likely acquired the spectrum for a lower value due to the potential constraints on the use of the spectrum. In short, Cricket had notice of any issues with the

[7] Cricket Petition at 2.

[8] *See, e.g., id.* at 1-2, 4

spectrum it purchased, and thus its belated attempt to change the rules at the expense of broadcast operations lacks merit.[9]

With respect to Cricket's assertion that a waiver would serve the public interest because of the company's focus on providing lower-cost service, Cricket's own pleading acknowledges that Cricket will not be the carrier using this spectrum to deploy service. Cricket expressly seeks to make its waiver transferable in conjunction with the proposed transfer of Cricket to AT&T.[10] Whatever public interest credit Cricket believes it deserves for its business plan of serving customers who may not be able to afford service from larger carriers, that credit cannot be transferred to another carrier.

C. Cricket's Request for a Transferable Waiver Must Be Denied.

As noted above, Cricket makes it perfectly plain that it does not even intend to remain the party that would benefit from the waiver, expressly seeking to make the waiver transferable. Evidently, Cricket's only motivation in seeking its waiver is to alter the facts that allowed Cricket to acquire the spectrum at a discount – permitting Cricket to flip the spectrum to a new buyer at a higher value. Spectrum arbitrage opportunities do not merit waiver of the Commission's rules.

Further, the forthcoming transfer of the license nullifies any technical or public interest showing Cricket has submitted. Cricket makes a *pro forma* claim that transfer of its license to a significantly larger carrier with significantly greater network coverage and significantly more customers will not lead to increased interference – but it points to

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[9] *See AT&T Inc., Leap Wireless International, Inc., Cricket License Company, LLC, and Leap Licenseco, Inc. Seek Consent to the Transfer of Control of AWS-1 Licenses, PCS Licenses, and Common Carrier Fixed Point to Point Microwave Licenses, and International 214 Authorizations, and the Assignment of One 700 MHz License,* Public Notice, WT Docket No. 13-193, DA 13-1831 (rel. Aug. 28, 2013).

[10] Cricket Petition at 5.

nothing in its technical exhibit that would substantiate such a counterintuitive claim. Absent specific technical evidence to the contrary, the logical conclusion would be that a larger deployment, with more subscribers and more devices, will increase the number of viewers potentially subject to interference. Even if the Commission were inclined to grant Cricket's request for waiver, which it should not, the Commission cannot reasonably make that waiver transferable to a carrier with a completely different network footprint.

Cricket attempts to draw an analogy between its request for a transferable waiver and the Commission's grant of transferable relief from interim construction benchmark deadlines.[11] That analogy is a remarkably poor fit. The waiver of interim construction deadlines does not cause interference to an incumbent operator. Further, transfer of a waiver of the construction deadlines to a much larger carrier has no immediately apparent ramifications for incumbent operations. In this case, it may well be that transfer of the requested waiver to a larger carrier, such as AT&T, could change the factual underpinnings of Cricket's assertion that the interference its requested waiver will produce is *de minimis*. At a minimum, the Commission should deny Cricket's waiver request, and allow the subsequent license holder to file for its own request for a waiver, with updated technical showings supporting the claim that operations on *its* network would produce only *de minimis* interference.

II. CONCLUSION

The Commission should deny Cricket's waiver request because Cricket has failed to satisfy the legal standard for a waiver of the Commission's rules. Grant of a waiver to Cricket would contradict the underlying purpose of the rule, which is to protect viewers of

[11] *Id.* at 25-26.

broadcast television stations. Cricket's claim that a waiver would serve the public interest is vague and speculative. Critically, because Cricket will not actually be the party deploying service in the event the waiver is granted, the Commission must not make any waiver transferable. Rather, the Commission should deny the request, and allow the subsequent licensee to submit a request of its own with an updated technical showing demonstrating how operation on Cricket's 700 MHz A Block license will protect viewers of WPWR-TV.

Respectfully submitted,

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