

**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 Section 27.60 for)	
Lower 700 MHz A Block License)	

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)¹ submits these reply 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 In particular, NAB responds to comments submitted by T-Mobile USA, Inc. (“T-Mobile”) asking the Commission to revise its rules to impose new requirements on broadcasters and increase the value of licenses T-Mobile is currently seeking to acquire.³ The Commission should reject T-Mobile’s request to rewrite the existing service rules governing 700 MHz A block spectrum, and should decline T-Mobile’s invitation to reduce the protections Congress provided for broadcasters in the Spectrum Act.

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).

³ *T-Mobile USA, Inc. and Cellco Partnership D/B/A Verizon Wireless Seek FCC Consent to the Assignments and Exchange of Lower 700 MHz, Advanced Wireless Service, and Personal Communications Service Licenses*, Public Notice, DA 14-163 (rel. Feb. 7, 2014).

I. **CRICKET AND T-MOBILE SEEK A RULEMAKING, NOT A WAIVER.**

T-Mobile asserts that the Commission should “clarify” that broadcasters are required to conduct “good faith negotiations” with wireless carriers seeking to force broadcasters to accept more interference than applicable rules permit.⁴ What T-Mobile seeks is not a “clarification” – it is a substantive alteration of the rules that would benefit T-Mobile in light of its pending acquisition of 700 MHz A block licenses from Verizon.

The current rules impose no obligation on broadcasters to negotiate with a wireless carrier seeking to short-space its operations. Rather, the rules *permit* a broadcaster to *consent* to wireless operations as one option to allow wireless carriers to satisfy Section 27.60’s requirements to protect the broadcaster’s service. Contrary to T-Mobile’s position, a broadcaster’s refusal to negotiate causes no hardship to the wireless carrier seeking to short-space its operations. If a broadcaster elects not to provide consent, the wireless carrier must either operate pursuant to required separation distances, or submit an engineering study to the Commission demonstrating that its requested short-spaced operation will not cause interference.⁵ T-Mobile’s assertion that “good faith negotiations between spectrally adjacent services are essential to promoting interference-free communications services” is misplaced.⁶ In the 700 MHz A block, wireless carriers and broadcasters are not similarly situated with respect to Section 27.60; they are not merely spectrally adjacent neighbors who operate on an equal footing in the eyes of the rule. Section 27.60 exists to provide protection for broadcast services,

⁴ T-Mobile Comments at 2-5.

⁵ 47 C.F.R. §27.60(b)(1).

⁶ T-Mobile Comments at 4.

and wireless licensees have no basis to operate outside the requirements of that rule to allow a broader deployment of service.

In this case, NAB notes that Fox Television Stations, Inc, licensee of WPRW-TV, disputes Cricket's unsupported assertion that Fox refused to negotiate. This only serves to highlight the problems with T-Mobile's effort to impose a new obligation on broadcasters to negotiate in good faith – carriers like Cricket may simply assert that a broadcaster's reasonable refusal to accept harmful interference constitutes a refusal to negotiate in good faith.

T-Mobile also apparently seeks to rewrite Section 27.60 to provide a new ability for wireless carriers to self-certify, based on an engineering study they commission, that operation at variance with the separation distances set forth in the rule should be permitted. T-Mobile asserts that Section 27.60(b)(1)(iii) provides that an engineering study may be performed by a wireless carrier in lieu of heeding to the separation distance requirements without the concurrence of the broadcast licensee.⁷ T-Mobile's request that the Commission "make clear that the flexibility provided in the rules is available to mitigate any need to coordinate with stations if a simple engineering analysis would demonstrate that there is no likelihood of interference,"⁸ suggests that T-Mobile believes the preparation of an engineering study affords a licensee a self-executing right to deploy at shorter separation distances. That is not what the rule provides. The rule states that, *subject to Commission approval*, a licensee may submit an engineering study demonstrating that its proposed short-spacing will not cause interference to broadcast

⁷ T-Mobile Comments at 7-8.

⁸ *Id.*

operations based on the parameters of the wireless deployment and the broadcast station at issue.⁹

As NAB noted in its original comments, Cricket well understood the requirements to protect DTV operations when it acquired its 700 MHz A block license, and was simply seeking to change the rules applicable to that license to allow its sale to another carrier at a higher price. Now, T-Mobile states that, “grant of this and *similar waivers* will promote deployment of the A Block while the Commission resolves this spectrum’s interference challenges in the context of the incentive auction proceeding.”¹⁰ Plainly, what T-Mobile seeks is not merely grant of the waiver Cricket requested, but for the Commission to treat Cricket’s request as a blueprint for widespread future waivers for operating outside the parameters of Section 27.60, effectively rewriting the rules.

Changing the rules to make it easier for wireless carriers to short-space their operations at the expense of broadcast viewers would certainly benefit T-Mobile. Like Cricket, T-Mobile knew full well the service rules applicable to the spectrum when it entered into its agreement with Verizon. Those service rules, and the associated limits they placed on the ability to deploy service at shorter than required separation distances from incumbent broadcast television operations, undoubtedly factored into both T-Mobile’s and Verizon’s valuation of the spectrum at issue. Cricket and T-Mobile merely seek to increase the value of A block licenses by rewriting the applicable service rules – after acquiring those licenses at a discount, of course.

To illustrate the scope of the regulatory arbitrage opportunity Cricket and T-Mobile seek, consider the relative values 700 MHz A block and B block spectrum received in

⁹ 47 C.F.R. §27.60(b)(1).

¹⁰ T-Mobile Comments at 2 (emphasis added).

Auction 73. Verizon paid \$892,400,000 for its B block license in Chicago, or approximately \$9.19 per MHz POP. As Cricket notes in its waiver request, that was the highest price per MHz POP among comparable licenses in Auction 73.¹¹ The A Block license for Chicago, on the other hand, received a winning bid of \$152,532,000. The Commission used different license areas for the A and B Blocks in Auction 73, but that bid translates to roughly \$1.23 per MHz POP, or a little over 13 percent of the price of the B Block spectrum. Allowing Cricket and T-Mobile to cash in on their “buy low” spectrum opportunities does not merit waiver of the Commission’s rules.

II. THE CRICKET WAIVER REQUEST HAS NO BEARING ON THE INCENTIVE AUCTION PROCEEDING.

T-Mobile seeks to extend Cricket’s request into the incentive auction proceeding, suggesting that grant of Cricket’s request “will also help inform the incentive auction process” and that bidders in the forward auction will “benefit from certainty concerning the obligations of broadcasters to negotiate with affected mobile broadband licensees prior to the incentive auction.”¹² As an initial matter, service rules for wireless services in the 600 MHz band have yet to be established, and T-Mobile’s suggestions regarding the shape of those rules would be more appropriately lodged in the incentive auction proceeding, where T-Mobile has been an active participant. In fact, the Office of Engineering and Technology recently sought comment on a proposed methodology for predicting inter-service interference.¹³ T-Mobile was free to comment on that methodology and on the

¹¹ Cricket Waiver Request at 19, citing *Auction of 700 MHz Band Licenses Closes, Winning Bidders Announced for Auction 73*, Public Notice, DA 08-595 (2008).

¹² T-Mobile Comments at 6.

¹³ *Office of Engineering and Technology Seeks To Supplement The Incentive Auction Proceeding Record Regarding Potential Interference Between Broadcast Television And Wireless Services*, Public Notice, ET Docket No. 14-14, GN Docket No. 12-268, DA 14-98 (rel. Jan. 29, 2014).

service rules it feels are appropriate for wireless service in the 600 MHz band – but Cricket’s waiver request has no bearing on the incentive auction proceeding.

More fundamentally, T-Mobile misapprehends the bedrock legal requirements Congress provided the Commission for conducting the incentive auction. Section 6403(b)(2) of the Spectrum Act places an important constraint on the means by which the Commission may carry out the incentive auction:

In making any reassignments or reallocations ..., the Commission shall make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology of the Commission.¹⁴

Section 6403(b)(2) provides the standard against which the adequacy of the incentive auction and repacking process must be measured: namely, coverage area and population served of each broadcast station as determined using OET-69. Plainly, then, with respect to inter-service interference, it is not the duty of broadcasters to voluntarily accept more interference at the request of wireless carriers, or to negotiate with wireless carriers seeking to create more interference and reduce a broadcaster’s effective service area and population served. The onus, rather, is on the Commission to develop reasonable, accurate methods of predicting potential interference between services, so that wireless carriers understand what they are buying.

Unfortunately, in this case, knowing exactly what they were buying and what service rules governed their use of the spectrum has not stopped Cricket and T-Mobile from seeking to alter those rules to increase the value of their spectrum. Contrary to T-

¹⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156, § 6403(b)(2) (Feb. 22, 2012) (codified at 47 U.S.C. § 1452(b)(2)) (“Spectrum Act”).

Mobile's assertions, the "clarification" the Commission should provide to wireless carriers in the incentive auction proceeding is a reminder they will be required to operate in accordance with rules protecting the service area and population served of broadcast stations, as Congress intended.

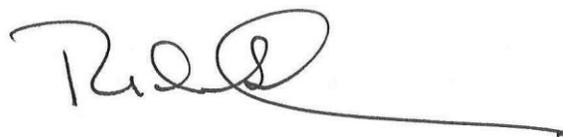
III. **CONCLUSION**

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, and should reject T-Mobile's request to treat the Cricket waiver request as a basis for future waivers. Further, the Commission must not accept T-Mobile invitation to inject into the incentive auction proceeding new requirements obligating broadcasters to negotiate with wireless carriers seeking to cause interference that would reduce the service area and population served by broadcasters. Any such approach would violate the Spectrum Act and could delay or upend the incentive auction.

Respectfully submitted,

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