

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|                                            |   |                              |
|--------------------------------------------|---|------------------------------|
| In the Matter of                           | ) |                              |
|                                            | ) |                              |
| Application of T-Mobile License, LLC for a | ) | ELS File No. 1072-EX-CN-2019 |
| 600 MHz Experimental License               | ) | Call Sign WK2XRH             |
|                                            | ) |                              |

**OPPOSITION OF T-MOBILE LICENSE, LLC**

T-Mobile License, LLC (“T-Mobile”),<sup>1/</sup> pursuant to Section 1.106(g) of the rules,<sup>2/</sup> submits this opposition to the Petition for Reconsideration (“Petition”) filed by Bluewater Wireless II, L.P. and TStar 600, LLC (collectively “Bluewater”).<sup>3/</sup> Bluewater challenges the grant by the Office of Engineering and Technology (“OET”) of T-Mobile’s application for experimental authorization in the 600 MHz band at certain sites.<sup>4/</sup> Bluewater’s Petition provides no credible basis for OET to reverse or modify its grant. Accordingly, OET should promptly deny the Petition.

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<sup>1/</sup> T-Mobile License, LLC is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

<sup>2/</sup> See 47 C.F.R. § 1.106(g).

<sup>3/</sup> See Petition of Reconsideration of Bluewater Wireless II, L.P. and TStar 600, LLC, ELS File No. 1072-EX-CN-2019 (filed Jan. 21, 2020) (“Bluewater Petition”). Bluewater styled its pleading alternatively as an “informal objection” or “informal comments.” But it also appears to recognize that the application it references has been granted and that the pleading should be considered a petition for reconsideration “[t]o the extent necessary.” Section 1.106 specifically contemplates that challenges to actions taken pursuant to delegated authority will be considered petitions for reconsideration. T-Mobile therefore responds pursuant to Section 1.106(g) of the rules.

<sup>4/</sup> See T-Mobile License, LLC Experimental Authorization WK2XRH, ELS File No. 1072-EX-CN-2019 (filed Dec. 31, 2019) (granted Jan. 9, 2020) (“T-Mobile Experimental Authorization”).

## **I. INTRODUCTION AND BACKGROUND**

On December 31, 2019, T-Mobile submitted an application for experimental authorization in the 600 MHz band.<sup>5/</sup> OET granted T-Mobile's application on January 9, 2020. On January 21, 2020, Bluewater filed a pleading challenging OET's action, asserting that T-Mobile had not sufficiently stated the purpose and scope of its intended experimental operations on the 600 MHz band.<sup>6/</sup> OET should reject Bluewater's Petition for Reconsideration. *First*, Bluewater has not demonstrated, as required by the Commission's rules, how it is adversely impacted by grant of T-Mobile's application. *Second*, Bluewater has not demonstrated that OET erred in granting T-Mobile's application. To the contrary, T-Mobile provided sufficient information in its narrative statement about its intended operations, consistent with the Commission's rules and the purpose of its experimental licensing program. *Finally*, there is no requirement in the Commission's rules or condition on its license that T-Mobile share the testing results of its experimental operations with Bluewater or any other party.

## **II. DISCUSSION**

### **A. Bluewater's Interests Have Not Been Adversely Affected by OET's Grant of T-Mobile's Application.**

A Petition for Reconsideration of an action taken pursuant to delegated authority must satisfy the requirements of Section 1.106 of the Commission's rules. Section 1.106(b)(1) requires that a party state with particularity the manner by which its interests have been adversely affected by the action taken by the designated authority.<sup>7/</sup> In this instance, Bluewater

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<sup>5/</sup> See T-Mobile Experimental Authorization at Narrative at 1.

<sup>6/</sup> See Bluewater Petition at 1-2.

<sup>7/</sup> See 47 C.F.R. § 1.106(b)(1).

is required to demonstrate how OET’s grant of experimental authorization adversely affects Bluewater’s interests as a 600 MHz licensee.

But Bluewater has not – and indeed cannot – satisfy this requirement. Experimental authorizations are secondary, and T-Mobile is not permitted to cause harmful interference to Bluewater or any other primary licensee.<sup>8/</sup> Further, T-Mobile’s application stated that it would provide notice of when it plans to use the 600 MHz frequencies that are unused, but licensed to others, and that if the licensee of that spectrum uses it, T-Mobile will cease operations immediately.<sup>9/</sup> OET granted T-Mobile’s authorization based on that statement and with the condition that T-Mobile cease all operations should harmful interference be detected.<sup>10/</sup> Therefore, there will not, and cannot, be any adverse impact to Bluewater’s operations because T-Mobile will stop operations to prevent that from occurring.

**B. The Petition Does Not Demonstrate that OET’s Action Was Based on an Incorrect Assessment of Facts or Law.**

In addition to demonstrating an adverse impact on the petitioner, a Petition for Reconsideration of an action taken pursuant to delegated authority must demonstrate that the action was based on an incorrect assessment of the facts or the applicable law.<sup>11/</sup> The Petition also fails this test. Bluewater claims that T-Mobile provided insufficient supplemental statements about its plans and purpose for the unused 600 MHz spectrum.<sup>12/</sup> It claims that T-Mobile violated Section 5.63 of the Commission’s rules because T-Mobile provided only “a very

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<sup>8/</sup> See 47 C.F.R. § 5.84.

<sup>9/</sup> See T-Mobile Experimental Authorization at Narrative at 3.

<sup>10/</sup> See Grant of Experimental Radio Station Construction Permit and License to T-Mobile License, LLC, ELS File No. 1072-EX-CN-2019, at 21 (Jan. 9, 2020).

<sup>11/</sup> See 47 C.F.R. § 1.106(d)(2).

<sup>12/</sup> See Bluewater Petition at 1.

superficial statement” about its proposed operations and that T-Mobile was required to explain, among other things, why its existing licenses are not sufficient to satisfy its goals, why a single test market is insufficient, and whether commercial operation is envisioned.<sup>13/</sup>

However, T-Mobile provided precisely the information required by the Commission’s rules. Section 5.63(c)(1) states that an applicant must submit “[a] narrative statement describing in detail the program of research and experimentation proposed, the specific objectives sought to be accomplished; and how the program of experimentation has a reasonable promise of contribution to the development, extension, or expansion, or use of the radio art, or is along lines not already investigated.”<sup>14/</sup> T-Mobile’s application clearly articulated its plans and purpose for seeking authorization to use the 600 MHz frequencies. For example, T-Mobile explained that it was requesting experimental authorization to test innovative 5G technologies across wider bandwidths in the 600 MHz band in order to better understand the full characteristics of the spectrum using different technology vendors.<sup>15/</sup> It also explained that conducting those tests in densely populated markets would provide valuable data on new technologies that it could not achieve with its existing licenses.<sup>16/</sup> T-Mobile provided the number and identity of specific

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<sup>13/</sup> See Bluewater Petition at 1.

<sup>14/</sup> 47 C.F.R. § 5.63.

<sup>15/</sup> See T-Mobile Experimental Authorization at Narrative at 2 (“T-Mobile seeks to make its 600 MHz service even better. That is why, among other things, it is conducting the tests permitted pursuant to the authorization the Commission granted under the call sign WK2XQF, which will allow T-Mobile to work with equipment vendors to test innovative 5G technologies. . . . Grant of the application would allow T-Mobile to continue to assess the full characteristics of the 600 MHz band using different technology vendors, particularly in congested markets, and gain a better understanding of the new, innovative services that this low-band spectrum can offer, without causing harmful interference to existing users of the band.”).

<sup>16/</sup> See *id.* at 2 (“The test the Commission already authorized, and that T-Mobile would continue under the requested authorization, would evaluate 5G NR across wider bandwidths, especially in densely populated areas.”).

testing locations (*e.g.*, Irvine, CA, San Diego, CA, and Bellevue, WA, among others),<sup>17/</sup> despite Bluewater’s assertions to the contrary.<sup>18/</sup>

In T-Mobile’s judgement, the markets it selected will provide the most useful test results. OET was not required to make individual assessments whether the number or identity of the particular markets chosen were appropriate. Bluewater would have OET substitute its judgement for T-Mobile’s of the circumstances that will provide useful test information. But that would undermine the purpose of experimental authorizations, which is to permit applicants, not the Commission, to specify the parameters under which test information may be generated, subject to ensuring that the experimental licensee does not cause harmful interference to others.

To the contrary, the Commission has historically declined to require extensive demonstrations in experimental authorization applications and has attempted to streamline even further its experimental licensing rules to reduce burdens on applicants. For example, in evaluating and modernizing its experimental authorization rules in 2013, the Commission declined to require applicants for experimental authorizations to provide additional information or clarifications beyond the requirements of Section 5.63 and indicated that it would rely on OET’s sound judgment.<sup>19/</sup> The Commission specifically noted that “a Part 5 authorization may be granted for a broad range of research and experimentation,” applicants are required to describe their proposed operations pursuant to Section 5.63, and the Commission will “rely on

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<sup>17/</sup> See generally T-Mobile Experimental Authorization.

<sup>18/</sup> See Bluewater Petition at 1.

<sup>19/</sup> See *Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission’s Rules and Streamlining Other Related Rules; 2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology (OET)*, Report and Order, 28 FCC Rcd 758 (2013).

[its] staff to exercise their expertise and discretion in determining whether particular applications meet the requirements of the Part 5 rules . . . .”<sup>20/</sup>

The Commission recently reaffirmed its policy of maintaining streamlined rules and limiting burdens on experimental authorization applicants in order to foster the development of new services and technologies. In particular, in the Spectrum Horizons proceeding, the Commission explained that experimental licenses are intended to have low barriers to entry without “unnecessary limitations” because they are “an engine for innovation and offer extraordinary flexibility in system design and technical specifications . . . .”<sup>21/</sup> In exchange for this flexibility, applicants are prohibited from causing harmful interference to existing authorized users.<sup>22/</sup> T-Mobile’s proposed operations and its agreement not to cause harmful interference do just that. T-Mobile’s application therefore not only complied with the requirements in the Commission’s rules, but was also fully consistent with the goals of the FCC’s experimental licensing program.

**C. The Rules Do Not Require T-Mobile to Provide Notice of its Application to Bluewater or Any Other Party.**

Bluewater complains that T-Mobile did not provide it with “proper notice” of the application for experimental authorization.<sup>23/</sup> It also suggests that it could have potentially been convinced to consent to T-Mobile’s application (and that it could be so convinced now based on

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<sup>20/</sup> *Id.* ¶ 154.

<sup>21/</sup> *Spectrum Horizons; James Edwin Whedbee Petition for Rulemaking to Allow Unlicensed Operation in the 95-1,000 GHz Band*, First Report and Order, 34 FCC Rcd 1605, ¶¶ 8, 11 (2019).

<sup>22/</sup> *Id.* ¶ 10 (“As with all experimental licenses, the exchange for the flexibility we give researchers to design and conduct experiments and tests is that experimental operations will not be protected from harmful interference from allocated services and they must not cause harmful interference to stations of authorized services, including secondary services.”).

<sup>23/</sup> See Bluewater Petition at 2.

modifications to the granted license “to be appropriately scaled”).<sup>24/</sup> But Bluewater’s statements are presumptuous and inconsistent with the rules. Those rules do not require that T-Mobile provide notice to Bluewater of its application. In addition, there is no requirement that applicants for experimental authorization obtain the consent of any other party when submitting an application. Bluewater simply seeks to insert itself into the experimental licensing process as a party requiring notice and an opportunity to provide approval. To the extent that Bluewater asserts that OET erred in granting an experimental license, it can, as it has, petition OET to reconsider its action.

Bluewater also argues that, pursuant to Section 5.73 of the rules, T-Mobile should share the results of its experimental efforts with Bluewater so that it can “benefit from the results of the test.”<sup>25/</sup> Bluewater overstates the requirements in Section 5.73. Section 5.73 states that “[t]he Commission *may*, as a condition of authorization, request that the licensee forward periodic reports in order to evaluate the progress of the experimental program.”<sup>26/</sup> The rule is clear that the Commission has the *discretion* to request information on T-Mobile’s testing results and that, *if* it chooses to do so, the information need only be provided to the Commission, not third parties. OET imposed no such obligation in this case. Bluewater presents no reason why OET should reconsider that decision.

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<sup>24/</sup> See Bluewater Petition at 1-2.

<sup>25/</sup> See *id.*

<sup>26/</sup> 47 C.F.R. § 5.73 (*emphasis added*).

### III. CONCLUSION

For the foregoing reasons, T-Mobile respectfully requests that the Commission promptly deny Bluewater's Petition for Reconsideration.

Respectfully submitted,

/s/ Steve B. Sharkey

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January 31, 2020

**CERTIFICATE OF SERVICE**

I, Angela Y. Kung, hereby certify that on January 31, 2020 a copy of the foregoing Opposition of T-Mobile License, LLC was served by first-class mail, postage paid, on the following:

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/s/ Angela Y. Kung  
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