

ROBERT J. BUTLER
HARRY F. COLE
ANNE GOODWIN CRUMP
DONALD J. EVANS
PAUL J. FELDMAN
KEVIN M. GOLDBERG
FRANK R. JAZZO
M. SCOTT JOHNSON
DANIEL A. KIRKPATRICK
MITCHELL LAZARUS
CHENG-YI LIU*
STEPHEN T. LOVELADY
SUSAN A. MARSHALL
HARRY C. MARTIN
MICHELLE A. McCLURE
MATTHEW H. McCORMICK
FRANCISCO R. MONTERO
RAYMOND J. QUIANZON
JAMES P. RILEY
DAVINA SASHKIN
PETER TANNENWALD
KATHLEEN VICTORY
HOWARD M. WEISS

1300 NORTH 17th STREET, 11th FLOOR
ARLINGTON, VIRGINIA 22209

OFFICE: (703) 812-0400
FAX: (703) 812-0486
www.fhhlaw.com
www.commlawblog.com

RETIRED MEMBERS
VINCENT J. CURTIS, JR.
RICHARD HILDRETH
GEORGE PETRUTSAS

OF COUNSEL
ALAN C. CAMPBELL
THOMAS J. DOUGHERTY, JR.
ROBERT M. GURSS*
KATHRYN A. KLEIMAN
ROBERT J. SCHILL
RICHARD F. SWIFT

February 7, 2013

MITCHELL LAZARUS
(703) 812-0440
LAZARUS@FHHLAW.COM

* NOT ADMITTED IN VIRGINIA

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: WT Docket No. 10-153, Amendment of Part 101 to Facilitate Wireless Backhaul

Dear Ms. Dortch:

On behalf of the Fixed Wireless Communications Coalition, Inc. (FWCC),¹ pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am electronically filing this written *ex parte* communication in the above-referenced docket.

¹ The FWCC is a coalition of companies, associations, and individuals interested in the Fixed Service—i.e., in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, fixed microwave engineering firms, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, cable TV providers, backhaul providers, and/or their respective associations, communications carriers, and telecom attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see www.fwcc.us.

Marlene H. Dortch, Secretary
Federal Communications Commission
February 7, 2013
Page 2

The FWCC responds here to the “Comments of Wireless Strategies Inc. Regarding the Second Further Notice of Proposed Rule Making and Second Notice of Enquiry WT Docket 10-153,” filed on January 28, 2013.²

Along with its earlier proposals, WSI now suggests adding a footnote to Section 101.115 that reads: “Non-compliant antennas (antennas not meeting Category A specifications) can be authorized on the condition that they must not cause harmful interference and must accept harmful interference pursuant to Rules 101.103 and 101.115(c).”

After careful study of WSI’s filing, we remain uncertain as to whether WSI intends it to support (a) WSI’s request, now pending, that Category B users predicted to cause interference need only upgrade to an antenna adequate to clear the interference case, and not necessarily to Category A, or (b) WSI’s request, now on reconsideration, that the Commission permit antennas that fail to meet Category B standards, where doing so will not cause interference to other users.

The FWCC has consistently opposed both proposals. WSI’s present filing, regardless of which request it intends to support, fails to address the FWCC’s concerns.

A. INTERMEDIATE UPGRADES TO SUB-CATEGORY A

WSI’s new footnote would assure that upgrades to a sub-Category A antenna would not cause, and must accept, harmful interference. But the possibility of such immediate interference has never been part of the FWCC’s objection. Our concern, rather, is that WSI’s proposed rule could require an incumbent to undergo a sequence of multiple upgrades, each one being a fresh opportunity to obstruct and delay new applicants.

The present rule requires a one-time upgrade from Category B to Category A, after which an incumbent licensee has no further obligations regarding its antenna. Under WSI’s proposal, in contrast, an incumbent that upgrades from Category B to a sub-Category A, in order to accommodate an applicant, may have to upgrade yet again to accommodate a subsequent applicant, and so on. The result can be a sequence of multiple upgrades by the same licensee as successive applicants seek to use the band. Each of these upgrades is certain to require a financial outlay. Some may require a very substantial outlay—for example, if the upgraded antenna cannot be accommodated on the same tower.

² Despite being captioned “Comments,” the WSI filing is submitted beyond the deadline for comments on the cited notice by a matter of months. We have no objection to the Commission’s accepting it nonetheless as an *ex parte* filing, however, and we respond accordingly.

Marlene H. Dortch, Secretary
Federal Communications Commission
February 7, 2013
Page 3

At each stage, the incumbent would have both the means and the financial motive to stall, hoping the applicant will give up and withdraw.³ And, because the Commission's Rules do not put a time limit on these upgrades, the incumbent could stall indefinitely without triggering a violation.⁴ In actual practice, an applicant whose proposed operation depends on an incumbent's upgrade will often abandon the application, rather than wait for the incumbent to comply. WSI's proposal would multiply the number and frequency of such disputes. Its proposed footnote does not address this problem.

B. SUB-CATEGORY B ANTENNAS

WSI's other request, now on reconsideration, would allow the installation of antennas that do not meet Category B standards, where doing so would not cause interference to other users.

The problem with this proposal is that an inferior antenna requires a higher transmitter power and distributes more of that power in directions away from the antenna axis. Even if the antenna does not cause interference to *existing* users, it "sterilizes" a greater area against use by *future* applicants.⁵

Moreover, starting with an antenna below Category B will further multiply the number of potentially required upgrades. WSI's proposal would give a licensee incentive to start with the least expensive and least directional antenna possible and, when required to upgrade (by reason of causing predicted interference), to install an antenna barely capable of clearing the interference case. The option of starting with a badly inferior antenna will multiply the number of occasions on which a given incumbent can thwart new entrants. Nothing in WSI's recent filing addresses this issue, either.

³ For details, *see* Comments of the Fixed Wireless Communications Coalition in Response to the Commission's Second Further Notice of Proposed Rulemaking in WT Docket 10-153 (filed Oct. 5, 2012).

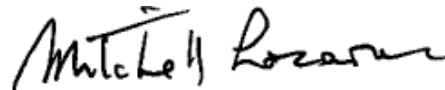
⁴ The FWCC is on record as supporting a time limit for upgrades. *See* Reply Comments of the Fixed Wireless Communications Coalition in WT Docket No. 10-153 at 3 (filed Oct. 25, 2011); Comments of the Fixed Wireless Communications Coalition in WT Docket No. 10-153 at 4 (filed Oct. 4, 2011); Comments of the Fixed Wireless Communications Coalition in WT Docket No. 10-153 at 15, n.31 (filed Oct. 25, 2010). Time limits alone may not solve the problem, however, as a recalcitrant incumbent facing an expensive upgrade may still seek to delay by challenging the applicant's showing that the upgrade is necessary. Such technical disputes, followed by reconsideration and review of adverse findings, could drag on for a considerable time, during which the incumbent continues operating with its inadequate and interfering antenna.

⁵ For details, *see* Fixed Wireless Communications Coalition Opposition to Petition for Reconsideration in WT Docket No. 10-153 (filed Dec. 5, 2012).

Marlene H. Dortch, Secretary
Federal Communications Commission
February 7, 2013
Page 4

For the reasons given above, and in the FWCC's prior filings, the Commission should reject both of WSI's proposals.

Respectfully submitted,



Mitchell Lazarus
Counsel for the Fixed Wireless
Communications Coalition

cc: Chairman Julius Genachowski
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Zachary Katz, Chief of Staff, Office of Chairman Genachowski
Charles Mathias, Special Counsel, Office of Chairman Genachowski
Erin A. McGrath, Legal Advisor, Commissioner McDowell
Dave Grimaldi, Chief of Staff, Office of Commissioner Clyburn
David Goldman, Senior Legal Advisor, Office of Commissioner Rosenworcel
Matthew Berry, Chief of Staff, Office of Commissioner Pai
Ruth Milkman, Chief, Wireless Telecom. Bur.
James Schlichting, Senior Deputy Chief, Wireless Telecom. Bur.
John S. Leibovitz, Deputy Chief, Wireless Telecom. Bur.
Tom Peters, Chief Engineer, Wireless Telecom. Bur.
Melissa Lidden Tye, Legal Advisor, Wireless Telecom. Bur.
Blaise Scinto, Chief, Broadband Div., Wireless Telecom. Bur.
John Schauble, Deputy Chief, Broadband Div., Wireless Telecom. Bur.
Stephen Buenzow, Deputy Chief, Broadband Div., Wireless Telecom. Bur.
Charles Oliver, Attorney Advisor, Broadband Div., Wireless Telecom. Bur.
Brian Wondrack, Attorney Advisor, Broadband Div., Wireless Telecom. Bur.
Julius Knapp, Chief, Office of Engineering and Technology
Michael Mulcay, Chairman, Wireless Strategies Inc.