

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FIBERTOWER SPECTRUM
HOLDINGS, LLC,

Appellant

v.

FEDERAL COMMUNICATIONS
COMMISSION,

Appellee.

Case No. 14-1039

MOTION FOR LEAVE TO INTERVENE

The Fixed Wireless Communications Coalition, Inc. (“FWCC”), pursuant to 28 U.S.C. § 2348, 47 U.S.C. § 402(e), Rule 15(d) of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15(b), hereby moves for leave to intervene as of right in the above-captioned appeal in support of Appellant FiberTower Spectrum Holdings, LLC (“FiberTower”).¹

FiberTower seeks review of the orders of the Federal Communications Commission (“FCC” or “Commission”) captioned *In the Matter of Fiber Tower Spectrum Holdings LLC; Requests for Waiver, Extension of Time, or in the alternative, Limited Waiver of Substantial Service Requirements; 94 Applications for Extension of Time to Construct 24 GHz Digital Electronic Message Service (DEMS) Licenses*, File Nos. 0005207557 *et seq.*; *345 Applications for Extension of*

¹ To the extent necessary, the FWCC also requests that the Court waive the requirement that this motion be filed within 30 days after an appeal is filed.

Time to Construct 39 GHz Economic Area Licenses, File Nos. 0005207187 *et seq.*; *250 Applications for Extension of Time to Construct 39 GHz Rectangular Service Area (RSA) Licenses*, File Nos. 0005207571 *et seq.*, Memorandum Opinion and Order, 27 FCC Rcd 13562 (rel. Nov. 7, 2012); Memorandum Opinion and Order, 28 FCC Rcd 6822 (rel. May 7, 2013); Order on Reconsideration, 29 FCC Rcd 2493 (rel. Feb. 27, 2014). In those decisions, the FCC found that FiberTower’s activities did not meet the FCC’s “substantial service” requirements for 689 of its 24 GHz and 39 GHz fixed service spectrum licenses and denied FiberTower’s request for an extension of time or limited waiver of the requirements in Sections 101.17 and 101.527 of the Commission’s rules.

The FWCC is a coalition of companies, associations, and individuals interested in the licensing, operation, and regulation of terrestrial fixed microwave communications, generally referred to as “fixed service.” FWCC 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 telecommunications attorneys and engineers. 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.

The FiberTower licenses at issue in this case were fixed service licenses. The FWCC filed statements at the FCC in support of FiberTower's Petition for Reconsideration (filed June 6, 2013) as its members' business activities center on the types of spectrum licenses, and are affected by Commission policies at issue, in this case. Thus, its members' interests would be substantially affected by the outcome of this appeal and justifies the FWCC's intervention under 28 U.S.C. § 2348 ("...associations ...whose interests are affected by the order of the agency, may intervene in any proceeding to review the order"). The FWCC therefore respectfully requests that this Court grant its motion for leave to intervene in support of Appellant FiberTower.

Respectfully submitted,

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May 15, 2014

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on behalf of the Fixed Wireless Communications Coalition, Inc., on May 15, 2014, the foregoing Motion for Leave to Intervene was electronically filed with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system and copies were caused to be served by electronic service via CM/ECF, for registered participants, and U.S. mail on the following.

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, the Fixed Wireless Communications Coalition, Inc. (“FWCC”) submits the following disclosure statement.

The FWCC is a non-profit corporation incorporated in Delaware. The FWCC has no parent company and no publicly-held company has any ownership interest in the entity. The FWCC is a “trade association” operated for the purpose of promoting the general commercial or other interests of its membership. Specifically, FWCC is interested and actively engaged on behalf of its members in

matters relating to the licensing, operation and regulation of terrestrial fixed microwave communications, including the spectrum licenses at issue in this case.

Respectfully submitted,

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