



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
STEPHEN T. LOVELADY
SUSAN A. MARSHALL
HARRY C. MARTIN
MICHELLE A. McCCLURE
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.
KATHRYN A. KLEIMAN
ROBERT M. GURSS*
ROBERT J. SCHILL
RICHARD F. SWIFT

September 10, 2012

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: FiberTower Corporation, Request for Extension of Time or, in the Alternative, Limited Waiver of Substantial Service Requirement, File Nos. 0005207557 *et al.*

Dear Ms. Dortch:

The Fixed Wireless Communications Coalition (FWCC)¹ supports the request of FiberTower Corporation for an extension of time or limited waiver of the substantial service requirements applicable to its 24 GHz and 39 GHz licenses.²

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 telecommunications 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.

² See FiberTower Corporation, Request for Extension of Time or, in the Alternative, Limited Waiver of Substantial Service Requirement, File No. 0005207557 *et al.* (filed April 30, 2012).

Marlene H. Dortch, Secretary

September 10, 2012

Page 2

The FWCC has previously discussed the market and policy challenges that have hindered the market for millimeter wave band spectrum from realizing its full potential.³ We argued that the renewal standards are a significant obstacle to building out. In particular, the Commission's reliance on quantitative "safe harbors" for renewal-time showings of substantial service can work against needed technologies and long-term business models. We quoted from an earlier pleading by FiberTower, a passage worth another look:

By relying almost exclusively on quantitative safe harbors, the Commission has narrowly limited its review to whether a licensee has made investments specifically for the service area and frequencies at issue in the renewal application instead of considering investments made by the licensee to place it in a position to even develop its spectrum on a nationwide or regional basis. Investments in fiber, in real estate rights, in equipment warehousing and a distribution network, in a [network operations center], and in the development of reliable long-term relationships with equipment partners make it possible for FiberTower to provide service in the relevant area even though the investment is not considered for purposes of the safe harbor. In fact, *the investments necessary to groom the spectrum for commercial long-term use often represent more than 90% of the actual costs of providing service.* In other words, more than 90% of the costs must be incurred prior to ever installing a radio.⁴

The present renewal requirements can have the perverse effect of actually hindering build-out. A company that fails to meet the requirements, and thereby loses its license, will have to walk away from whatever investment it has made in the band. Compounding this loss is the subsequent and substantial investment in alternative technology to carry traffic originally provisioned on the abandoned link. A prudent licensee will refrain from making the substantial upfront investment described above if it perceives a risk that it may lose its license before reaching the stage of profitable returns.

An additional level of renewal uncertainty arises from the Commission's pending proposal for a unified renewal showing for multiple wireless services.⁵ Such a potential and unknown change in the

³ See Comments of the Fixed Wireless Communications Coalition in WT Docket No. 12-156, at 13-15 (filed July 16, 2012); *Service Rules for the Fixed Service in the 41.0-42.5 GHz Band*, Petition for Rulemaking of the Fixed Wireless Communications Coalition, RM-11664, at 5-7 (filed May 9, 2012).

⁴ *Amended Comments of Fiber Tower*, WT Docket No. 10-112, at 15 (filed Aug. 6, 2010) (emphasis added; footnote omitted), *quoted in Service Rules for the Fixed Service in the 41.0-42.5 GHz Band*, Petition for Rulemaking of the Fixed Wireless Communications Coalition, RM-11664, at 5-7 (filed May 9, 2012).

⁵ *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996 (2010). The proposed renewal standard would include a substantial service showing and a "regulatory compliance demonstration" showing substantial compliance with the Commission's rules, policies, and the Communications Act. *Id.* ¶ 17. The FWCC criticized this approach. Reply Comments of the Fixed Wireless Communications Coalition, WT Docket No. 10-112 (filed Aug. 23, 2010).

Marlene H. Dortch, Secretary

September 10, 2012

Page 3

requirements for wireless point-to-point services adds to the disincentive to invest in building out. Finally, the nature of exclusive geographic licensing prevents other potential users from easily stepping in when a licensee fails to construct. A millimeter wave license abandoned for the above reasons may take years to relicense.

A better renewal test for area-licensed Fixed Service licensees—one that reflects the Commission’s policy goals in licensing the spectrum—is simply whether the licensee is realistically prepared to offer service on a reasonable schedule to those who request it. FiberTower’s record, described below, amply demonstrates its qualifications under this standard.

Despite the present obstacles, FiberTower has emerged as a leading alternative provider of wireless backhaul and “middle mile” connectivity, establishing commercial relationships with every major U.S. wireless carrier (including the largest nine operators in the country) and providing services to a wide range of local ISPs and emergency first-responders. Moreover, as a fixed wireless subcontractor to Verizon and CenturyLink under the GSA Networx contract,⁶ FiberTower is an indispensable provider of connectivity to the Federal government.

FiberTower has taken other steps to enhance the value of its millimeter wave band spectrum. We understand, for example, that FiberTower has partnered with the country’s leading spectrum brokers—Spectrum Bridge and Comsearch—to facilitate secondary market lease arrangements for its licensed 24 GHz and 39 GHz spectrum holdings. Additionally, FiberTower has promoted the development of millimeter wave band equipment, partnering with equipment vendors such as BridgeWave Communications and DragonWave to develop high-capacity radios capable of using 24 and 39 GHz spectrum. FiberTower has played a vital role in the growth of low-cost and low-impact small-cell backhaul equipment, point-to-multipoint microwave systems, and other technologies necessary to support next-generation wireless deployments.

Revocation of FiberTower’s millimeter wave band licenses would not only ignore the steps FiberTower has taken to develop its 24 and 39 GHz spectrum, but would also damage the country’s wireless ecosystem. FiberTower’s offerings are crucial to the seamless operation of U.S. wireless services. The Commission has recognized that the ability of carriers to meet future mobile broadband demand in urban environments will rest largely on the proliferation of microcell technologies⁷ of the type that FiberTower has been instrumental in developing. Similarly, the Commission has identified wireless backhaul as the only viable high-capacity backhaul solution in some parts of the country, and recently made additional spectrum available for that use.⁸ Several mobile carriers and backhaul equipment manufacturers have

⁶ See GSA Networx contract, at www.gsa.gov/networx.

⁷ See *Wireless Telecommunications Bureau Announces Workshop Agenda: Augmenting Mobile Broadband In Your Community; An Overview of Distributed Antenna Systems and Small Cell Solutions*, Public Notice, DA 12-97 (released Jan. 27, 2012).

⁸ *Amendment of Part 101 to Facilitate Wireless Backhaul*, Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 26 FCC Rcd 14221 at ¶ 3 (2011).

Marlene H. Dortch, Secretary

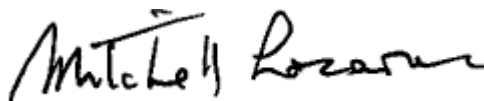
September 10, 2012

Page 4

expressed concerns about the potential revocation of FiberTower licenses, and have asked the Commission to grant the pending FiberTower extension/waiver requests.⁹

Revoking FiberTower's licenses would constitute a serious policy error, inasmuch as no other party is as well-positioned or prepared to build out the licenses. It would likely take years for the Commission to find new licensees willing to satisfy the existing substantial service safe harbors, as they have been interpreted. Alternatively, if the Commission decided to reclaim the spectrum and reallocate it for a different use, the necessary rulemaking would take even longer than reassignment. Neither form of transition could possibly occur before the end of 2013, the date by which FiberTower has committed to fully building out the licenses at issue. The Commission can best facilitate the prompt deployment of service—and thereby serve the underlying purpose of the substantial service rules—by granting FiberTower's pending request for extension or waiver.

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

⁹ Letters are on file from AT&T, BridgeWave, DragonWave, Sprint, and T-Mobile.