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May 1, 2019

VIA ECFS

Marlene H. Dortch, Secretary

Re: Notice of *Ex Parte* Presentation
TerreStar Corporation Request for Temporary Waiver of Substantial Service Requirements for 1.4 GHz Licenses, WT Docket No. 16-290

Dear Ms. Dortch:

On April 29, 2019, on behalf of TerreStar Corporation ("TerreStar"), Doug Brandon of TerreStar, Eugene Scalia and Helgi Walker of Gibson, Dunn & Crutcher LLP, and the undersigned of Wilkinson Barker Knauer LLP, met with Tom Johnson, Ashley Boizelle, and Anjali Singh of the Commission's Office of General Counsel ("OGC"). During the meeting, we reiterated points made in TerreStar's unopposed Petition for Reconsideration, as well as in subsequent filings,[1] in support of the pending Petition for Reconsideration before the Wireless Telecommunications Bureau's regarding its prior denial of an extension of the substantial service deadlines for TerreStar's 1.4 GHz spectrum licenses.

Specifically, we explained that TerreStar was unable to meet the substantial service deadlines associated with its 1.4 GHz licenses through no fault of its own. Rather, TerreStar discovered that its plans to build a smart grid network – a deployment that the company had every right to pursue as it was entirely consistent with FCC rules – would have resulted in catastrophic interference to wireless medial telemetry services ("WMTS") in the adjacent band. As discussed below, this interference was based on WMTS equipment receiving emissions from within TerreStar's primary band and not an out-of-band emission. As a result of this discovery, rather than continue to pursue deployment of smart grid technology, TerreStar shifted its plans for the 1.4 GHz spectrum toward commercial WMTS – the *only* use of that spectrum that would not result in significant harm to adjacent WMTS operations.

[1] *See* Letter from Eugene Scalia, Counsel for TerreStar, to Marlene Dortch, Secretary, WT Docket No. 16-290 (filed Jan. 29, 2018).

At the time Terrestar made this decision and in its extensive talks with the Bureau about how to move forward, the devastating effects of the potential interference to WMTS were undisputed—and they still are. As the American Society for Healthcare Engineering ("ASHE") recognized, "even a small level of interference could result in the failure of the WMTS system to monitor critical care patients for some period of time, placing those patients at significant health risk."[2] Similarly, GE Healthcare informed the Commission that "[a]s a safety-of-life service, WMTS cannot tolerate even small or episodic incidents of interference…. a single source of interference can cripple an entire WMTS system and be extremely difficult to identify, while endangering patients and diverting the attention of hospital staff."[3] TerreStar conclusively demonstrated the devastating impact of the interference in a study it conducted in 2004 and shared with Commission staff.[4]

Under these circumstances, TerreStar should have received an extension of time to meet its substantial service obligations under Section 1.946(e) of the Commission's rules.[5] That section specifically provides for an extension of substantial service deadlines "if the licensee shows that failure to meet the construction or coverage deadline is due to … causes beyond its control."[6] As we discussed with OGC, no amount of due diligence by TerreStar could have uncovered the WMTS interference issues as it was working to deploy smart grid technology. WMTS receivers were only certified beginning in 2011, and only then with wide passband filters to enable life-critical monitoring of medical patients. TerreStar could not have known that the manner in which WMTS developed their receivers would make them vulnerable to interference from an entirely compliant operation in the adjacent band. And no exclusion zones or other mitigation efforts could have addressed this interference problem that resulted from fundamental emissions – not out-of-band emissions – to the WMTS band.[7]

Furthermore, we explained that TerreStar should have been granted a waiver of its substantial service deadlines pursuant to Section 1.925 of the Commission's rules.[8] Section 1.925(b)(3)(ii) provides that a waiver is appropriate when, "[i]n view of unique or unusual

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[2] *See* Letter from Regina Keeney, Counsel for TerreStar, to Marlene Dortch, Secretary, FCC, WT Docket No. 16-290 (May 30, 2017) (*citing* Comments of the American Society for Healthcare Engineering of the American Hospital Association at 5, GN Docket No. 16-46 (May 24, 2017)).

[3] *Id.* (*citing* Comments of GE Healthcare at 5, GN Docket No. 16-46 (May 24, 2017)).

[4] *See* Letter from Bryan Tramont, Counsel for TerreStar, to Marlene Dortch, Secretary, FCC, Attachment, WT Docket No. 16-290 (July 17, 2018).

[5] 47 C.F.R. § 1.946(e)(1).

[6] *Id.*

[7] *See TerreStar Corporation Request for Temporary Waiver of Substantial Service Requirements for 1.4 GHz Licenses*, Order, 32 FCC Rcd 7480, 7485 ¶ 12 (WTB 2017) ("Bureau Order").

[8] 47 C.F.R. § 1.925.

factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."[9] It is difficult to imagine facts more "unique" or "unusual" than those present here—two fully compliant systems in adjacent spectrum bands that indisputably cannot coexist without causing devastating interference to one of the systems. Contrary to the Bureau's order, the Commission's existing rules are inadequate to protect WMTS "regardless of the type of service [TerreStar] chose to deploy."[10] Had TerreStar pursued it initial plan of deploying smart grid technology in its licensed spectrum, as it could have done, WMTS receivers would have experienced interference that would have impeded the operation of those receivers, putting lives that were dependent on such monitoring in jeopardy. TerreStar should not be punished for doing the right thing and pursuing an alternative deployment plan that did not pose risk to human safety because of these unique circumstances.

Finally, we explained that the public interest is served by granting TerreStar's petition pursuant to Section 1.925(b)(i).[11] As Chairman Pai has recently acknowledged in correspondence to Congress, "telemedicine and wireless technologies have great potential to improve patient outcomes and reduce the costs of our health care system," and "expanding [WMTS] in the 1.4 GHz band is an innovative opportunity—and one that deserves [the FCC's] attention."[12] The need for additional spectrum for WMTS is clear. No entity is better situated to deploy quickly this spectrum for WMTS than TerreStar. TerreStar has committed to deploy to at least 50 large healthcare facilities within 18 months of grant of its Petition for Reconsideration and to all large healthcare facilities across the country within 36 months of grant. The Bureau should expeditiously grant the pending Petition for Reconsideration so that TerreStar can ensure that this critical, life-saving technology is available nationwide.

This letter is being filed electronically in accordance with Section l.1206(b)(1) of the Commission's rules.

Sincerely,

_____/s/_____
Jennifer Tatel

[9] *Id.* § 1.925(b)(3)(ii).

[10] Bureau Order at ¶ 15.

[11] *Id.* § 1.925(b)(3)(i)

[12] *See* Letter from Eugene Scalia, Counsel for TerreStar, to Marlene Dortch, Secretary, FCC, WT Docket No. 16-290 (filed March 4, 2009).