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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of the Secretary

In the Matter of:

Amendment of Parts 1, 2, 22, 24, 27, 90 and 95
of the Commission's Rules to Improve Wireless
Coverage Through the Use of Signal Boosters

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WT Docket No. 10-4

To: The Commission

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PETITION FOR FURTHER RULEMAKING

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SUMMARY

The so-called “personal-use restriction” refers to the provisions of § 20.21 of the Commission’s rules (“Rules”) that provide that a CMRS subscriber may operate a Consumer Signal Booster (“consumer booster”) “for personal use,” 47 C.R.R. § 20.21(a), and that a consumer booster may be sold only to members of the general public “for their personal use.” *Id.* § 20.21(g). A rulemaking is underway to eliminate the personal-use restriction only as it applies to Provider-Specific Consumer Signal Boosters (“provider-specific boosters”). Commenters unanimously supported the elimination of the restriction. Now, Wilson Electronics, LLC (“Wilson”), the leading manufacturer of consumer boosters, asks the Commission to issue a further notice of proposed rulemaking to eliminate the personal-use restriction entirely, replacing it with a multi-provider registration requirement for Wideband Consumer Signal Boosters (“wideband boosters”). In particular, Wilson proposes that § 20.21 of the Rules be amended by deleting the phrase “for personal use” from § 20.21(a), the second sentence of § 20.21(g), and by deleting § 20.21(b) and adding a new § 20.21(b) to read as follows:

Operation of Wideband Consumer Signal Boosters. Third parties may use a subscriber’s Wideband Consumer Signal Booster under the authorizations held by the licensees providing service to the third parties, provided that the subscriber has complied with paragraph (a) of this section and the device has been registered with the licensees providing service to the third parties.

The personal-use restriction should be amended or repealed in a notice-and-comment rulemaking for two basic reasons. First, the Commission has never entertained public comments on the fundamental question of whether wireless subscribers should be limited to operating consumer boosters for personal use. Second, and more problematic, the personal-use restriction does not provide clear and adequate notice of what conduct it prohibits. The restriction:

- Employs the ambiguous terms “personal use” and “general public,” which are susceptible

to different interpretations;

- Is inconsistent with §§ 22.9, 24.9 and 27.9 of the Rules, which authorize non-individuals to operate consumer boosters; and,
- Can be construed to permit consumer boosters to be used by third parties who register the devices with their service providers.

The record compiled in the ongoing rulemaking is replete with evidence that consumer boosters offer small businesses, local governments and first responders a cost-effective option to improve wireless coverage. Commenters urged the Commission to get rid of the personal-use restriction in order to allow businesses and other enterprises to employ provider-specific boosters. Eliminating the restriction entirely will free them to use cost-efficient wideband boosters. The Commission should recognize the reality that consumer boosters are, and need to be, operated by non-individuals and individuals alike for non-personal uses. It should repeal the personal-use restriction, and it can do so without fear of adverse consequences.

The Network Protection Standard (“NPS”) that the Commission adopted in 2014 for consumer boosters has eliminated the interference issues that had previously existed. None of the four nationwide service providers have reported that consumer boosters have had a significant negative impact on their networks. Since the NPS went into effect, Wilson has shipped more than 750,000 Commission-approved consumer boosters and received no reports that any of its boosters caused interference to a wireless network. In short, the NPS requirements have worked to protect network operations, and they will continue to do so after the personal-use restriction is totally eliminated.

There is no cause to believe that NPS-compliant, Commission-approved wideband boosters will cause interference if they are used by businesses, governmental agencies, first

responders, or other enterprises. In the unlikely event that interference does occur, a requirement that wideband boosters be registered with local wireless service providers will facilitate the rapid resolution of the interference issue.

Under the blanket licensing framework that the Commission adopted in 2014, a wideband booster can be purchased for regular use by subscribers of multiple serving providers on the condition that the booster is registered with the service providers. If the Commission requires that wideband boosters be registered with multiple local service providers prior to operation as a condition of authorization, there would be no need for the personal-use restriction to ensure that such boosters are not used in an unauthorized fashion. The use of a fully-registered wideband booster would be authorized under multiple provider licenses, thereby complying with § 301 of the Communications Act, and be under the operational control of the licensees. And, in the absence of the personal-use limitation, blanket licensing and the provider-based registration system would allow wideband boosters to be purchased and deployed by non-individuals to serve their own purposes – and the public interest.

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To: The Commission

PETITION FOR FURTHER RULEMAKING

Wilson Electronics, LLC ("Wilson"), by its attorney and pursuant to § 1.401(a) of the Commission's Rules ("Rules"), hereby petitions the Commission to issue a further notice of proposed rulemaking ("FNPRM") to amend §§ 20.21(a) and 20.21(g) of the Rules to eliminate the so-called "personal use" restriction on the operation and sale of all Consumer Signal Boosters ("consumer boosters").¹ In support thereof, the following is respectfully submitted:

INTRODUCTION

Wilson has been a leading advocate for signal boosters and was one of the industry architects of the regulatory framework of § 20.21 of the Rules.² Wilson filed one of the three petitions for rulemaking that led the Commission to open this docket.³ Subsequently, it was among

¹ See 47 C.F.R. §§ 20.21(a) ("A subscriber in good standing of a commercial mobile radio service system may operate a [consumer booster] for personal use under the authorization held by the licensee providing service to the subscriber provided that the subscriber complies with paragraphs (a)(1) through (6)") and 20.21(g) (consumer boosters "may only be sold to members of the general public for their personal use").

² Wilson and its subsidiaries, weBoost LLC and zBoost LLC, are leaders in the wireless communications industry, and have designed and manufactured cellular signal boosters, antennas and related components for more than 20 years.

³ See *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, 26 FCC Rcd 5490, 5492 (2011) ("*Signal Booster NPRM*"). See also *Wireless Telecommunications Bureau Seeks Comment on Petitions Regarding the Use of Signal Boosters and Other Signal Amplification Techniques Used with Wireless Services*, 25 FCC Rcd 68, 69 (2010).

the five industry stakeholders that proposed a set of rules that would apply to all consumer boosters – the so-called “Consolidated Proposal” – that included the two “safe harbors” that formed the basis of the Network Protection Standard (“NPS”) codified at § 20.21(e) of the Rules.⁴ Finally, Wilson was a party to two petitions for reconsideration – the so-called “Wi-Ex Petition” and the “Verizon Petition” – the grant of which resulted in technical rule changes to “ensure consumers have access to a wide variety of signal boosters while strengthening the technical protections for wireless networks.”⁵

As its latest effort to “expand consumer access to signal boosters,” the Commission is currently proposing to eliminate the personal-use restriction for Provider-Specific Consumer Signal Boosters (“provider-specific boosters”), but not Wideband Consumer Signal Boosters (“wideband boosters”).⁶ Nevertheless, ACUTA, The Association for College & University Technology Advancement filed comments in response to the *Signal Booster FNPRM* in which it urged the Commission to remove that restriction for wideband boosters as well.⁷ Wilson wholeheartedly agrees, and it seeks the issuance of an FNPRM to ensure that the issue is properly before the Commission.⁸

⁴ See *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, 28 FCC Rcd 1663, 1668 (¶ 11) (2013) (“*Signal Booster Order*”). See also *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, 29 FCC Rcd 11563, 11568 (¶ 16) (2014) (“*Signal Booster FNPRM*”).

⁵ *Signal Booster FNPRM*, 29 FCC Rcd at 11563 (¶ 2).

⁶ See *id.* at 11571 (¶ 28).

⁷ See Comments of ACUTA, WT Docket No. 10-4, at 1 (Dec. 29, 2014) (“ACUTA Comments”).

⁸ The repeal of the personal-use restriction could be considered a logical outgrowth of the *Signal Booster FNPRM*. See, e.g., *Amendment of Parts 1 and 22 of the Commission’s Rules with Regard to the Cellular Service, Including Changes in Licensing of Unserved Area*, 29 FCC Rcd 14100, 14118 n.115 (2014) (“the final rule must be ‘a logical outgrowth’ of the rule proposed”). If not, the Commission should issue the requested FNPRM to ensure compliance with the notice requirements of the Administrative Procedure Act, see 5 U.S.C. § 553(b), and §§ 1.412 and 1.413 of the Rules. See 47 C.F.R. §§ 1.412, 1.413.

DISCUSSION

I. THE PERSONAL-USE RESTRICTION SHOULD BE REVISITED IN A NOTICE-AND-COMMENT RULEMAKING

A. The Personal-Use Restriction Was Adopted Without Notice and Comments

The Commission employed the term “personal use restriction” for the first time in its *Signal Booster FNPRM* to identify the following provisions of § 20.21:⁹

A subscriber in good standing of a [CMRS] system may operate a [consumer booster] for *personal use* under the authorization held by the licensee providing service to the subscriber provided that the subscriber complies with paragraphs (a)(1) through (6).¹⁰

* * * * *

[Consumer boosters] may only be sold to members of the general public for their *personal use*.¹¹

Interested parties did not get the opportunity to comment on the personal-use restriction before it was promulgated by the *Signal Booster Order*. The Commission did not propose the adoption of a personal-use restriction, and its *Signal Booster NPRM* did not alert interested parties that such a restriction was contemplated. None of the parties to the initial rulemaking filed comments on the subject. And a personal-use restriction was neither included in the Consolidated Proposal nor addressed in the public record.¹² Nor was it discussed in the text of the *Signal Booster Order*.

Wilson first learned that the Commission had specified that consumer boosters be used for personal use when it reviewed Appendix A to the *Signal Booster Order*, and read the terms of new § 20.21. It found the personal-use provisions of § 20.21 to be unclear and inconsistent with the

⁹ See *Signal Booster FNPRM*, 29 FCC Rcd at 11570 & n.49 (¶ 25).

¹⁰ 47 C.F.R. § 20.21(a) (emphasis added).

¹¹ *Id.* § 20.21(g) (emphasis added).

¹² See Comments of T-Mobile USA, Inc., Docket No. 10-4, at 2 (Dec. 29, 2014) (“T-Mobile 2014 Comments”).

signal booster rules in Parts 22, 24, and 27 of the Rules.¹³ Those provisions remained unclear, because the Commission did not provide any guidance as to their meaning until the *Signal Booster FNPRM* was released.¹⁴ Only then did the Commission offer the following for explanation for the personal-use provisions:

By incorporating the restriction that [consumer boosters] may be operated only for “personal use,” we also made it possible for consumers to seek consent from and register their devices only with the wireless carrier to which they subscribe. This restriction is particularly relevant for [wideband boosters], as they are capable of operating on spectrum licensed to multiple wireless providers.¹⁵

* * * * *

In the [*Signal Booster*] Order, we addressed a corollary to this matter in our discussion of *de minimis*, third-party use of [wideband boosters]. There, we recognized that [wideband booster] use will not necessarily be limited to the purchaser of the device, and the device therefore may be used on the spectrum of a wireless carrier for whom the device was not registered. We sought to maintain flexibility for consumers while mitigating the impact to wireless carriers by authorizing *de minimis*, *i.e.*, occasional, incidental use of a [consumer booster] by a third party under the license of the third party’s wireless provider.¹⁶

* * * * *

If a consumer registers a [wideband booster] with her service provider and properly operates it in her home or car, the signal booster will only be operated on that provider’s spectrum. In this way, the “personal use” restriction ensures that the signal booster is not normally used (in an unauthorized fashion) on other providers’ spectrum.¹⁷

¹³ In retrospect, Wilson should have asked the Commission to reconsider the adoption of the personal-use restriction. However, at the time, Wilson did not fully appreciate the ramifications of limiting consumer boosters to personal use. In particular, Wilson was marketing its signal boosters to individuals, and it did not foresee the current, soaring business, institutional, and public-safety demand for cost-efficient consumer boosters.

¹⁴ On the day that the *Signal Booster Order* was released, the Commission posted information about signal boosters on its website. See *Signal Boosters – Robust Wireless Service at Home, at Work, and on the Road* (visited Feb. 20, 2013) <http://wireless.fcc.gov/signal-boosters/-index.html>. In May 2013, the Commission issued a Small Entity Compliance Guide on the subject. See *Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters*, 28 FCC Rcd 7341 (2013). Neither publication addressed the personal-use restriction.

¹⁵ *Signal Booster FNPRM*, 29 FCC Rcd at 11571 (¶ 26) (footnotes omitted).

¹⁶ *Id.* at 1157 n.52 (citations omitted).

¹⁷ *Id.* at 1157 n.53.

By virtue of the *Signal Booster FNPRM*, the Commission has had the benefit of public comments on the issue of whether the personal-use restriction should be eliminated for provider-specific boosters. And commenters were unanimously in favor of eliminating the restriction.¹⁸ However, the Commission has never entertained public comments on the specific, fundamental question of whether wireless subscribers should be limited to operating consumer boosters for “personal use.” It should entertain those comments now.

B. The Personal-Use Restriction Should Be Revised or Repealed

Because it was neither honed by public comments nor explained in the *Signal Booster Order*, the Commission’s personal-use restriction suffers from vagueness and is subject to misinterpretation. Comments filed in this proceeding clearly show that the restriction has been misconstrued to flatly prohibit businesses, public institutions, and other enterprises from purchasing and using consumer boosters.¹⁹ The source of that misconception appears to have been the use of the ambiguous term “personal use.”

Uncertainty was introduced by the *Signal Booster Order* in which the Commission stated that it had defined consumer boosters as “devices that are marketed to and sold for personal use by individuals.”²⁰ That was not the case. There is no personal-use restriction in the definition of

¹⁸ T-Mobile 2014 Comments at 2; Comments of Nextivity, Inc., WT Docket No. 10-4, at 1-8 (Dec. 29, 2014) (“Nextivity Comments”); Comments of CellAmerica Corp., WT Docket No. 10-4, at 3 (Dec. 29, 2014); Comments of the Enterprise Wireless Alliance., WT Docket No. 10-4, at 1-2 (Dec. 29, 2014); ACUTA Comments at 2.

¹⁹ See Comments of T-Mobile USA, Inc., WT Docket No. 10-4, at 3 (Mar. 30, 2016) (allowing “consumer boosters to be used outside the personal-use context would allow usage by small businesses”) (“T-Mobile 2016 Comments”); T-Mobile 2014 Comments at 3 (“If provider-specific ... boosters are limited to personal use, small businesses would not be able to take advantage of them”); Nextivity Comments at 5-6 (the personal-use restriction is an “arbitrary and unnecessary prohibition on enterprise use” of consumer boosters).

²⁰ *Signal Booster Order*, 28 FCC Rcd at 1668 (¶ 13).

the term “Consumer Signal Booster” that the Commission added to § 20.3 of the Rules.²¹ The term is simply defined as “[a] bi-directional signal booster that is marketed and sold to the general public for use without modification.”²² Therefore, a consumer booster is not by definition a booster that is sold for personal use.

The term “personal use” employed in § 20.21(a) is susceptible to different interpretations as shown by the decisions of the courts that have grappled with the meaning of the term.²³ Some courts have interpreted “personal use” based on the definition of the word “personal” as “[o]f or relating to a particular person; private.”²⁴ Others have decided that “the term ‘personal use’ means, simply non-business use.”²⁵ Thus, § 20.21(a) could be construed to limit a CMRS subscriber to operating a consumer signal booster for a “particular person” to use, or for a “private” use, or for a “non-business use.” These constructions are all reasonable if the subscriber is an individual. But the service-specific signal booster rules allow partnerships, corporations, associations, state or local governments, and other legal entities to operate consumer boosters.

In the *Signal Booster Order*, the Commission authorized the use of consumer boosters “in the wireless radio service spectrum bands used for the provision of subscriber-based services under parts 22 (Cellular), 24 (Broadband PCS), 27 (AWS-1, 700 MHz Lower A-E Blocks, and 700 MHz

²¹ *Signal Booster Order*, 28 FCC Rcd at 1737.

²² 47 C.F.R. § 20.3. There is a discrepancy between the “sold for personal use by individuals” language of the *Signal Booster Order* and the “sold to the general public for use without modification” language of § 20.3.

²³ There has been a significant number of bankruptcy court decisions construing the phrase “acquired for the personal use of the debtor” in 11 U.S.C. § 1325(a). See *In re Cross*, 376 B.R. 641, 645 (S.D. Ohio 2007). For a discussion of the case law attempting to interpret that “confusing” statutory language, see *In re Solis*, 356 B.R. 398, 406-08 (S.D. Tex. 2006).

²⁴ E.g., *In re Jackson*, 336 B.R. 923, 926 (M.D. Ga. 2006).

²⁵ E.g., *In re Grimine*, 371 B.R. 814, 816 (S.D. Ohio 2007).

Upper C Block), and 90 (Specialized Mobile Radio) of [the Rules].”²⁶ It also made “Non-individual” a defined term meaning “a partnership and each partner is eighteen years of age or older; a corporation; an association; a state, territorial, or local government unit; or a legal entity.”²⁷

And it amended Parts 22, 24, and 27 by adding rules that all provided as follows:

Individuals and non-individuals may operate certificated [consumer boosters] on frequencies regulated under this part provided that such operation complies with all applicable rules under this part and section 20.21 of this chapter. Failure to comply with all applicable rules voids the authority to operate a signal booster.²⁸

At the same time it adopted the personal-use restriction, the Commission promulgated rules that expressly allow non-individual cellular, broadband PCS, AWS-1, and 700 MHz subscribers to operate certificated consumer boosters. That being the case, the phrase “a subscriber in good standing” in § 20.21(a) cannot be construed to mean an individual subscriber in good standing, and the phrase “for personal use” cannot be read to prohibit the operation of consumer boosters by a non-individual subscriber. Likewise, the phrase “for personal use” cannot be construed to mean for non-business use. Surely, the Commission could not have intended that certificated boosters be operated by non-individual CMRS subscribers only for the personal use of their partners, employees, or members.

Equally troublesome is the § 20.21(g) restriction that consumer boosters may only be marketed to “members of the general public for their personal use.” The term “general public” is considered an “ill-defined phrase,”²⁹ but the noun “public” is defined as “the people constituting a community, state, or nation.”³⁰ Thus, read in isolation, § 20.21(g) appears to limit the sale of

²⁶ *Signal Booster Order*, 28 FCC Rcd at 1677 (¶ 36).

²⁷ *Id.* at 1737; 47 C.F.R. § 20.3.

²⁸ *Signal Booster Order*, 28 FCC Rcd at 1746; 47 C.F.R. §§ 22.9, 24.9, 27.9.

²⁹ *Dallas City Packing, Inc. v. Butz*, 411 F. Supp. 1338, 1345 (N.D. Texas 1976).

³⁰ Random House Webster’s Unabridged Dictionary 1563 (2d ed. 2001).