

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of)	
)	
Wireless Telecommunications Bureau's)	
Broadband Division and Public Safety and)	
Homeland Security Bureau's Policy and)	
Licensing Division Issue Declaratory Ruling)	GN Docket No. 15-20
on Microwave Frequency Coordination and)	
Seek Comment on Portion of Petition for)	
Declaratory Ruling Filed by the Fixed)	
Wireless Communications Coalition, Inc.)	

**REPLY COMMENTS OF THE
FIXED WIRELESS COMMUNICATIONS COALITION**

The Fixed Wireless Communications Coalition, Inc. (FWCC)¹ files these reply comments in response to the January 26, 2014, *Public Notice* in the above-referenced docket.²

The FWCC commends the Commission for issuing the *Public Notice* promptly after receiving FWCC's request for clarification of Part 101 frequency coordination rules.³

¹ The FWCC is a coalition of companies, associations, and individuals actively involved in the fixed services—*i.e.*, 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 Wireless Telecommunications Bureau's Broadband Division and Public Safety and Homeland Security Bureau's Policy and Licensing Division Issue Declaratory Ruling on Microwave Frequency Coordination and Seek Comment on Portion of Petition for Declaratory Ruling Filed by the Fixed Wireless Communications Coalition, Inc., GN Docket No. 15-20, *Public Notice*, DA 15-108 (rel. Jan. 26, 2015) (*Public Notice*).

³ Fixed Wireless Communications Coalition, Request for Declaratory Ruling (filed Oct. 23, 2014) (*FWCC Request*).

A. ISSUES

The *Public Notice* seeks additional comment related to growth channels, “frequencies that a party coordinates not for immediate use, but as part of its plans for future expansion,”⁴ under Part 101 of the Commission’s rules.⁵ Specifically, the *Public Notice* asks whether: the Commission should contemplate a rulemaking to establish fixed time limits for holding growth channels; there is a widespread problem with applicants reserving growth channels that a fixed time limit would address; a fixed time limit would burden applicants who have a legitimate need to build large systems; and, alternatively, whether commenters have recommendations on rule changes the Commission should consider to modify the treatment of growth channels.⁶

B. DISCUSSION

The FWCC agrees with Comsearch that the Part 101 coordination process is generally effective, and that “conflicts requiring the FCC’s attention... are unusual.”⁷ While we do not believe there is currently “a widespread problem,” disputes could become more common in the future,⁸ especially as demand for wireless services and mobile backhaul continues to grow.⁹ Greater certainty on the proper treatment of growth channels, whether provided through a rulemaking proceeding to investigate a fixed time limit or, as Comsearch suggests, additional

⁴ *Public Notice* at 6.

⁵ 47 C.F.R. §101.103(d)(2)(xii).

⁶ *Public Notice* at 7.

⁷ Comments of Comsearch at 1.

⁸ *FWCC Request* at 9; *see also* Comments of PCIA – The Wireless Infrastructure Association at 1 – 2 (reiterating that future “disputes over growth channels may become commonplace” and that additional clarification from the FCC can “help to prevent these disputes and provide needed certainty for the wireless industry”).

⁹ *See* Comments of American Tower Corporation at 2 – 3.

clarification to be issued by the Commission,¹⁰ will help to guide the industry's continued self-resolution of issues. Additional Commission action is imperative as the guidance, with respect to growth channels, provided in the *Public Notice* is incomplete.

The *FWCC Request* raised these three main questions: (1) "When a party has coordinated growth channels, and another party seeks to license those channels, which party has the burden of showing need for the channels?"; (2) What are the elements of a successful showing?; (3) Is there a fixed time limit for holding growth channels?"¹¹

In response to the first two questions, the *Public Notice* dispenses with the notion that the rules "contemplate comparative evaluation of each party's need."¹² Rather, the *Public Notice* interprets that the filing of an application along with a frequency coordinator's statement that an applicant cannot coordinate a channel not already reserved for future use is enough to demonstrate a greater need and trump another party's prior coordination.¹³ The *Public Notice* seems to imply that this "trump card" is absolute, and the holder of the growth channel has no recourse. Certain actors may take this to mean that full cooperation in the coordination process is unnecessary and simply rush to file applications over other parties that do not immediately agree to voluntarily relinquish a growth channel. We had hoped the Commission's clarification would also address the FWCC's question on "how a party can preserve its reservation of channels for future growth once a subsequent PCN has been received."¹⁴ To this point, we agree with

¹⁰ Comsearch at 2 – 4.

¹¹ *FWCC Request* at 2; *Public Notice* at 6.

¹² *Public Notice* at 6-7.

¹³ *Id.* at 7.

¹⁴ *FWCC Request* at 9.

Comsearch that relying only upon an “applicant’s unilateral opinion it cannot coordinate a channel [as indisputable]... would not be consistent with the cooperation the Commission expects in the Part 101 coordination process.”¹⁵ Absent a bright-line rule,¹⁶ we also agree with Comsearch that the Commission should confirm that the test of whether a party “cannot coordinate a channel that is not reserved for future use” does also take into account the opinion of the affected party or its frequency coordinator on whether other feasible alternatives exist (or were even explored).¹⁷ While this still places the burden on the Commission to eventually adjudicate disputes, the industry will at least have some certainty that a later party cannot simply rush to file as soon as a conflict arises.

Without clearer guidelines on growth channels, we are concerned applicants may continue to wrestle with the uncertainties inherent in case-by-case determinations. The *Public Notice* makes clear that, at this point, “there is no specific fixed time limit in the rule.”¹⁸ Whether a fixed time limit should be implemented, is even workable,¹⁹ or a better alternative exists, is worthy of further consideration through a full notice-and-comment rulemaking proceeding.²⁰

¹⁵ Comsearch at 3.

¹⁶ See, Comments of American Tower at pp. 3-4 (expressing concern that resolving disputes on a case-by-case basis without a bright line rule could promote spectrum warehousing and lead to more confusion and conflicts).

¹⁷ Comsearch at 3.

¹⁸ *Public Notice* at 7.

¹⁹ See Comsearch at 2 (“we anticipate that effective rules for a time limit would be difficult to craft”).

²⁰ Regardless of whether the Commission commences a rulemaking proceeding to investigate a fixed time limit, additional clarification should still be provided on the other issues raised herein.

CONCLUSION

The FWCC encourages the Commission to provide the industry with an additional opportunity to submit thoughts and concerns on these issues, and to take additional action consistent with the comments provided herein.

Respectfully submitted,



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