15-244

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ACCEPTED/FILED

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Federal Communications Commission
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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Request for Waiver of the 71-76/81-86 GHz Antenna Rules filed by Aviat Networks on April 5, 2013.**

**Ex Parte Communication**

Dear Ms. Dortch:

On behalf of the Fixed Wireless Communications Coalition, Inc. (FWCC),[1] pursuant to Section 1.1206(b)(1) of the Commission's Rules, I am electronically filing this written *ex parte* communication in the above-referenced matter.

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[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 telecom 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.

The FWCC is writing to strongly support the waiver request filed by Aviat Networks on April 5, 2013, regarding the relaxation of antenna standards for the 71-76/81-86 GHz bands.

As Aviat Networks explained, the original intended application of these bands for "virtual fiber"— *i.e.*, extremely high capacity links between points that generate or consume large amounts of data—has failed to materialize to the extent the Commission anticipated, ten years ago.[2] This has left the bands under-utilized.[3] Over the same period of time, however, developing technologies and shifting patterns of wireless usage have created the need for small, light, esthetically inconspicuous antennas, particularly to provide backhaul to small-cell installations. The 71-76/81-86 GHz bands would be ideal for these applications (Figure 1 shows an example), except that antennas complying with the present standards are too large in terms of size, weight, cost, and time needed to deploy. Aviat Networks mentions that cost is particularly critical, as the antennas often represent the biggest overhead for a site.

In short, the current antenna standards hamper an operator's ability to make best use of the 71-76/81-86 GHz bands.

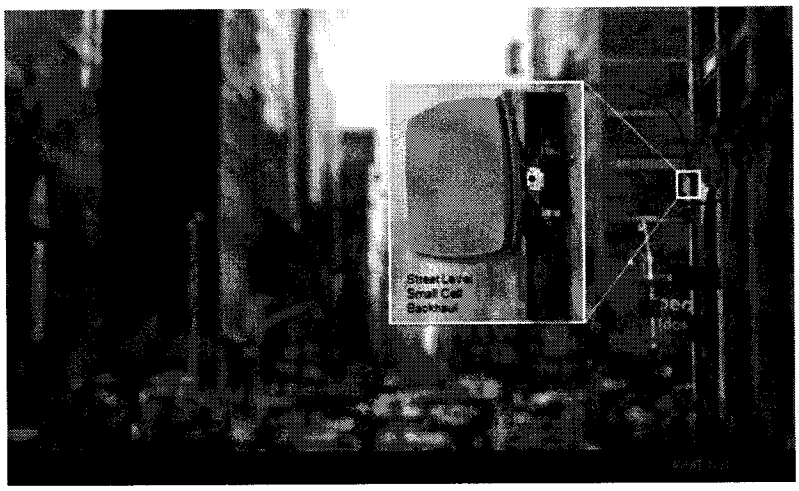


Figure 1 -- Sample Installation
of Waivered Antenna

2 Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands, Report and Order, 18 FCC Rcd 23318 at ¶¶ 6-24 (2003).

3 Aviat Networks reports that only about 5,500 links have been registered nationwide for these bands, plus 92-95 GHz, during the last decade.

The FWCC has requested a rule change to allow the deployment of smaller antennas.[4] Aviat Networks requested a waiver to permit the provision of those same smaller antennas during the pendency of the rulemaking, subject to the outcome of the rulemaking.[5] The early availability of waivered antennas will both serve new applications and yield an overall increase in link density, and hence improve efficient use of the spectrum.

The FWCC is writing now primarily to emphasize the importance of prompt relief.

The Commission's rulemaking procedures are laid down by the Administrative Procedure Act,[6] as construed by numerous decisions of the U.S. Court of Appeals.[7] The need to comply with those decisions has considerably slowed the rulemaking process. Where rule changes in the 1960s typically took six months or so, today the more usual time span, at least for a technical rulemaking, is around two to four years. Even five years or longer is not unusual.

As the rulemaking process has slowed in response to legal constraints, technological development has accelerated. The consequences of delay in today's rapidly evolving environment are more severe than they were, say, twenty or thirty years ago. Indeed, delaying access to a valuable technology by a period of years can be essentially tantamount to denying it altogether. We respectfully submit that delaying smaller 71-76/81-86 GHz antennas is contrary to the public interest. There is no advantage to be gained, and much to be lost, by withholding the benefits of inexpensive, inconspicuous small-cell backhaul for the years that a rule change will likely require.

Even as case law has slowed rulemaking, it has also provided a mechanism for relief, *via* waiver:

> [A]n application for waiver has an appropriate place in the discharge by an administrative agency of its assigned responsibilities. The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.[8]

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4 Letter from Mitchell Lazarus, Counsel, FWCC to Marlene H. Dortch, Secretary, FCC in WT Docket No. 10-153 (filed April 4, 2013); Comments of the Fixed Wireless Communications Coalition in Response to the Commission's Notice of Inquiry in WT Docket No. 10-153 (filed Oct. 5, 2012).

5 Aviat Networks specified that the waiver would be subject to the outcome of the ongoing rulemaking in WT Docket No. 10-153 and any other rulemaking proceeding affecting 71-76/81-86 GHz antenna standards. In the event the Commission ultimately rules against relaxation of the standards for these antennas, Aviat Networks proposed that the waiver expire as of the effective date of that ruling (or after 30 days, if the ruling takes effect in a shorter time), and agreed not to manufacture, import, or install a noncompliant antenna after that time.

6 5 U.S.C. § 553.

7 For a brief review of the cases having the greatest effect on the rulemaking process, *see* Comments of Mitchell Lazarus, *Pro Se*, in GN Docket Nos. 09-157 and 09-51 at 6-7 (filed Sept. 30, 2009).

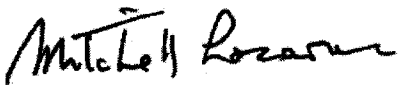
8 *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

The need for a "safety valve" through waiver can arise as urgently from procedural considerations as from substantive rules. The logic of *WAIT Radio* fully supports a grant of the Aviat Networks waiver request.

Moreover, nothing in the Aviat Networks request undercuts the Administrative Procedure Act. The requested waiver is temporary, and well within the scope of *WAIT Radio*. Permanent relief, if any, will come only through an APA-compliant rulemaking.

Please do not hesitate to contact me with any questions.

Respectfully submitted,



Mitchell Lazarus
Counsel for the Fixed Wireless
Communications Coalition

cc: Acting Chairwoman Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
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