

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

**In the Matter of** )  
 )  
**ACCESS 220, LLC** )  
 ) **WT Docket No. 02-224**  
**Request for Waivers to Provide Band** )  
**Management Services Utilizing Licenses** )  
**In the 220-222 MHz Band** )

**To: The Chief, Wireless Telecommunications Bureau**

**REPLY COMMENTS OF BIZCOM U.S.A. INC.**

Bizcom U.S.A. Inc. ("Bizcom"), by its attorneys, and pursuant to Public Notice DA 02-1939 released August 6, 2002 by the Wireless Telecommunications Bureau, hereby submits reply comments on the "Request for Waivers" filed on July 3, 2002 by Access 220, LLC and Access Spectrum, LLC ("Access 220"). While Bizcom does not oppose Access 220's request that the Commission license commercial managers in the 220-222 MHz band per se, Bizcom is concerned that the Access 220's plan to aggregate spectrum for broadband use will cause interference to narrowband co-channel licensees and that, contrary to the proposal's stated intention, could result in spectral inefficiencies within the band. Bizcom also believes that waivers of construction deadlines based upon commercial management of this spectrum should not be injudiciously or routinely granted.

**I. Bizcom Has A Direct Interest In This Proceeding.**

Bizcom's involvement in the 220-222 MHz industry is diverse and extensive. Currently, Bizcom is comprised of three divisions, integrating certain assets and capabilities deployed in 220-222 MHz narrowband systems. Each of these divisions has direct applications to the 220-222 MHz market.

First, with respect to 220-222 MHz operations, Bizcom manages some two hundred and ten (210) 220-222 MHz Phase I and Phase II licenses, making it the second largest 220-222 MHz manager/operator in the country. These licenses authorize the construction and operation of approximately 2,100 channels, and -- in the aggregate -- cover approximately 175,000,000 of the U.S. population.

Second, Bizcom's recent acquisition of narrowband technology and manufacturing rights from the Land Mobile Division of Datamarine International, Inc. reflects a substantial additional investment in narrowband 220 MHz technology and equipment. These assets complement the service operations component of Bizcom's business and constitute one of the few current manufacturing sources for narrowband 220-222 MHz equipment.

Third, Bizcom holds the rights to certain emergency management software products with significant potential applicability to 220-222 MHz narrowband systems. These software products provide a coordination capability for governments and industry before, during and after an emergency or disaster, including messaging, tasking, resource management, status boards, plans and several other disaster management functions. Bizcom is in the process of incorporating these products into its 220-222 MHz systems capabilities, with the expectation that the resulting enhanced system operations will ensure continuous communications services in emergency situations.

In short, Bizcom is deeply vested in the 220-222 MHz industry, and in particular, in the narrowband technology characterizing the operations in this frequency band. Although an expansion of the permissible uses in this band may well enhance the value and productivity of the spectrum, it should not be assumed that existing narrowband operations will not continue to play a significant role. Accordingly, any consideration of the Request for Waivers should ensure

adequate protection of and deference to existing narrowband operations in the 220-222 MHz band.

**II. The Commission Should Exercise Caution In Considering Rule Waivers That Would Loosen Construction Deadlines In A Band Manager Environment.**

Access 220 requests (at pages 16 – 18) that the Commission grant waivers of Sections 90.725 and 90.769 of the Rules, the respective construction requirements for Phase I and Phase II licensees, in order “to permit alternative construction showings by band managers.” Such waivers are needed, Access 220 argues, because band managers do not themselves construct, but rather provide for the coordinated use of spectrum by third parties. Access 220 further asserts that the strict application of the construction requirements would be “unduly burdensome” because band managers seek to provide use of spectrum in a variety of areas, including lower density areas, and do not necessarily focus exclusively on the type of PCS or cellular wide-area schemes that build out from high density areas.<sup>1</sup>

Based on these expressed concerns, Access 220 proposes that the Commission employ a more flexible “substantial service” test, which for both Phase I and Phase II nationwide licenses will take into account “third party” construction. In addition, Access 220 urges the Commission to adopt certain “safe harbor” provisions for purposes of clarifying the application of the “substantial service” standard. The safe harbour provision for Phase I licenses, would permit Access 220 to select between the six and ten-year construction requirements set forth in Section 90.725 (applicable to Phase I nationwide licensees), or the construction requirements set forth in Section 90.769 (applicable to Phase II nationwide licensees). The safe harbor provision for

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<sup>1</sup> Access 220 Waivers Request, at 18.

Phase II nationwide licenses would incorporate the specific construction requirements set forth in Section 90.769 of the Rules.<sup>2</sup>

While Bizcom agrees with Access 220 that counting third party construction is imperative if the band manager concept is to work, Access 220's request for a more lenient and flexible construction requirement with respect to coverage of area and population is not warranted. In support of its waivers request, Access 220 refers repeatedly to the Commission's grant of waiver relief to Intek License Acquisition Corp. and its affiliates ("ILAC") as providing a basis for its own request.<sup>3</sup> The *ILAC Order*, however, was careful to maintain certain construction requirements that Access 220 apparently now seeks to eliminate. This departure is particularly troubling since a large portion of Access 220's assets are the very licenses which were the subject of the *ILAC Order*.<sup>4</sup>

The ILAC waiver was based primarily on ILAC's intent to establish uniform construction requirements for disparate licenses in order to permit ILAC to build out a single nationwide system. In return for granting the waiver relief to harmonize certain disparate construction requirements,<sup>5</sup> the Commission imposed two express conditions on ILAC: (i) that ILAC meet an

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<sup>2</sup> Access 220 Waivers Request, at 18.

<sup>3</sup> See *Intek License Acquisition Corp. Request for Waiver and Consolidation of 220 MHz Construction Requirements*, Memorandum Opinion and Order, 16 FCC Rcd 16431 (2001) ("*ILAC Order*").

<sup>4</sup> Aerway, Inc.'s 220 MHz holdings represent the consolidated licenses of RoamerOne, Securicor and Intek License Acquisition Corp., which were the same licenses at issue in the *ILAC Order*.

<sup>5</sup> Specifically, with respect to ILAC's Phase I nationwide licenses, the FCC permitted ILAC to satisfy either the remaining six- and ten-year construction requirements set forth in Section 90.725 of the Commission's Rules or the construction requirements set forth in Section 90.769 of the Rules applicable to Phase II nationwide licensees. With respect to ILAC's Phase II REAG licenses, the FCC permitted ILAC to either satisfy the construction requirements in Section 90.767 or to meet specified alternative geographic coverage benchmarks. *ILAC Order*, at paras. 11-12.

interim coverage benchmark of 250,000 square kilometers or 12.5% of the U.S. population by September 16, 2002, and (ii) that ILAC *or a successor in interest* operate the licenses as an integrated 28-channel nationwide system. Access 220 adopts the basic waiver relief granted by the FCC in the *ILAC Order*, but ignores the specific conditions that accompanied that waiver relief. And while Access 220 argues (at n. 42) that its band manager activities should be “deemed to meet” the FCC’s requirement that the licenses operate as an integrated 28-channel nationwide system, in fact, the management and allocation of discrete spectrum leases in no way equates to the operation of a consolidated nationwide network.

Bizcom submits that the Commission’s careful retention in the *ILAC Order* of certain area and population construction thresholds reflects its continued view that such thresholds are necessary to ensure the efficient use of spectrum and the bona fides of spectrum users. While band management activities may serve to increase the efficient use of spectrum by putting the spectrum into the hands of parties who most desire to use it, specific construction requirements ensures that the spectrum actually is deployed. As a result, Access 220’s effort to replace the specific construction benchmarks established by the Commission for nationwide 220-222 MHz licenses with a more generalized “substantial service” standard does not serve the public interest.

**III. Bizcom Shares The Concerns Expressed By Other Commenters That Access 220’s Proposal Could Result In Increased Interference In The 220-222 MHz Band.**

The comments filed by Texas License Consultants (“TLC”) and by Data Comlink, Inc. (“Comlink”) both raise concerns of harmful interference with narrowband operations in the 220-222 MHz band from the Access 220 proposal. Bizcom shares these concerns and urges the Commission to consider the issue of potential interference carefully. As TLC notes, it and other 220 MHz licensees, including Bizcom, use equipment designed to accommodate the 5 kHz

spectrum blocks authorized by 220 MHz licenses. It appears, however, that Access 220's goal is to eliminate the interleaved nature of the 220 MHz band by acquiring contiguous 220 MHz licenses, allowing lessees of its spectrum to conduct operations over the consolidated spectrum merely by modifying older FM products manufactured by Motorola and others. Like TLC, Bizcom is concerned that the use of this 12.5 kHz FM product over any consolidated block of spectrum will cause harmful interference to existing co-channel and adjacent channel licensees operating 5 kHz narrowband systems. Deployment of disparate technologies within the 220 MHz band, without appropriate technical standards and with no frequency coordination, is likely to produce intermodulation products and other forms of harmful interference to co-channel and adjacent channel operators.

As noted in the comments filed by Comlink, the Commission's experience with analogous Nextel rule waivers, the rebanding of the 800 MHz band and the interference problems suffered by public safety users are instructive here. The Commission should take appropriate steps to ensure that narrowband operations in the 220 MHz band are protected from increased interference from the kind of untrammelled consolidated spectrum use that appears to be contemplated by Access 220.

**IV. The Access 220 Proposal Could Result In Less Efficient Use Of The 220 MHz Spectrum Block.**

Access 220 and commenters supporting its proposal argue that the requested rule waivers will promote more efficient use of the 220 MHz band. In part, these arguments rest upon the proposition that use of the 220 MHz band has not developed as rapidly as had been hoped, and the conclusion that the Access 220 proposal will spur greater use of the band. While Bizcom does not dispute that growth of 220 MHz systems has been moderate, it should not be

overlooked that Bizcom and others are making efficient and productive use of the band to provide important narrowband services, including emergency management software products for homeland security. Thus, existing and planned narrowband uses of this spectrum should not be overlooked or minimized.

In Motorola's view, "grant of the requested waivers will serve the public interest by permitting Access 220 to provide radio users additional flexibility, which will allow more efficient use of the 220 MHz band and thereby fulfill one of the Commission's primary allocation priorities." It is not necessarily true, however, that providing "additional flexibility" will result in more efficient use of this spectrum. In fact, a 5 kHz narrowband channelization scheme is at least two times more spectrally efficient than a 12.5 kHz channelization scheme. Indeed, the Commission expressly "reserved the 220-222 MHz band for narrowband usage to provide an incentive for users to develop narrowband technology to facilitate efficient channelization."<sup>6</sup> As already noted, harmful interference to narrowband operations from the Access 220 proposal is a matter of genuine concern. Should such interference occur, inherently more efficient narrowband usage of the band would be compromised. Accordingly, it cannot simply be assumed that the Access 220 proposal will result in more efficient use of this spectrum.

#### **V. Conclusion.**

While Bizcom generally supports the concept of permitting band managers to function in the 220-222 MHz space, the Commission should ensure that any rule waivers granted to Access 220 or any other band managers adequately protect 220 MHz narrowband operations from

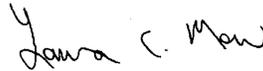
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<sup>6</sup> *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services*, Report and Order, 6 FCC Rcd 2357-6 at ¶ 9 (1991).

interference. In addition, Bizcom submits that Access 220's request for waiver of construction deadlines is unduly broad and should be limited as described in these comments.

Respectfully submitted,

BIZCOM U.S.A. INC.



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