

June 17, 2005

**Via Electronic Filing***Ex Parte Notice*

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW., TW-A325  
Washington, DC 20554

**Re: BRN Phoenix, Inc.  
In the Matter of Wireless Operations in the  
3650-3700 MHz Band; Rules for Wireless Broadband  
Services in the 3650-3700 MHz Band  
Additional Spectrum for Unlicensed Devices Below  
900 MHz and in the 3 GHz Band; Amendment of the  
Commission's Rules with Regard to the 3650-3700  
Government Transfer Band: ET Docket No. 04-151  
WT Docket No. 05-96; ET Docket No. 02-380;  
ET Docket No. 98-237**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), this letter is to provide notice of an *ex parte* meeting regarding the above-referenced proceeding. On June 16, 2005, Alexander Globus, CEO of BRN Phoenix, Inc. ("BRNP"), Dale Branlund, CTO of BRNP, and Ronald E. Quirk, Jr., counsel to BRNP met with the following FCC officials: Gary Thayer of OET, Thomas Stanley of WTB, Eli Johnson of WTB, Paul Murray of WTB, and Rashmi Doshi of OET.

During the meeting, the BRNP representatives discussed BRNP's proposals that the Commission: (a) designate the advanced antenna system method ("AAS Standard") using orthogonal frequency division multiple access ("OFDMA") modulation as described in Section 8.4.4.7 of the IEEE Standard 802.16-2004 as the contention-based protocol ("CPB") for fixed terrestrial systems operating in the 3.65 GHz band; and (b) permit the equivalent radiated power ("EIRP") to be increased when the AAS Standard is employed by  $10 \cdot \text{LOG} (BW_{\text{Azimuth}}/360)$  (where  $BW_{\text{Azimuth}}$  is the 3dB beamwidth of the antenna pattern measured in the azimuthal plane).

The BRNP representatives made a PowerPoint presentation which illustrated the overall view of its proposal, *i.e.*, provided visual materials to augment the matters covered in its Petition for Partial Reconsideration in this proceeding which it filed on June 10, 2005.

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The PowerPoint presentation contains trade secrets and proprietary commercial information that that is not routinely available for public inspection, as stated in Section 0.457(d) of the Commission's Rules, 47 C.F.R. § 0.457(d). As such, and pursuant to Section 0.459 of the Commission's Rules, 47 C.F.R. § 0.459, BRNP requests that the Commission designate the PowerPoint presentation as confidential.

The PowerPoint presentation contains proprietary information concerning equipment that BRNP is developing, and how it will be used in implementing service in the competitive wireless broadband market. Disclosure of this information would cause competitive harm to BRNP, as it would allow competitors to ascertain trade secrets pertaining to the equipment and BRNP's implementation plans. BRNP has not disclosed this information to any other third parties not involved in direct partnership or financing discussions and BRNP is keeping the subject information confined to a secure, private database. BRNP will submit the PowerPoint presentation to the Commission upon receiving notice that this request for confidentiality has been granted.

After the PowerPoint presentation, the parties briefly discussed matters pertaining to BRNP's rebanding proposal and its EIRP power increase, as stated in its Petition for Reconsideration. BRNP discussed how its rebanding proposal would permit simultaneous operations and interference protection in the 3.65 GHz band, and how its proposal for increased EIRP would not cause increased probability of interference to fixed earth stations relative to the existing R&O rules as long as AAS is employed.

Pursuant to the Commission's Rules, this *ex parte* notice is being filed electronically through the Commission's Electronic Comment Filing System procedures. If you have any questions, please contact the undersigned at (202) 344-4677. Thank you.

Sincerely,

/s/ Ronald E. Quirk, Jr.

cc: Gary Thayer  
Thomas Stanley  
Eli Johnson  
Paul Murray  
Rashmi Doshi