

August 27, 2007

VIA ELECTRONIC FILING

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

Re: WTB Docket No. 07-54
Ex Parte Notice

Dear Ms. Dortch:

This letter is in response to an August 24, 2007 *ex parte* filing by FiberTower Corporation summarizing three meetings that its representatives had with the Commission the previous day. FiberTower made four points in response to Mobile Satellite Venture's proposal urging the Commission to adopt new procedures to better protect Mobile Satellite Service feeder link earth stations from potential aggregate interference. MSV hereby responds to each in turn:

1. *Existing coordination procedures give MSV adequate protection. According to FiberTower, "interference criteria are set to take into account possible multiple exposures," citing ITU-R SF.1006 (1993).*

MSV is pleased that FiberTower seems to be acknowledging that aggregate interference would be a valid basis for objecting to an attempt to deploy a new microwave facility in the vicinity of a feeder link earth station after the earth station has been licensed. It is not apparent to MSV, however, that the ITU guideline cited by FiberTower either has been incorporated by the Commission into its rules or requires aggregate interference to be considered. The relevant Commission rule, Section 25.251(b), specifies that "[t]he technical aspects of coordination are based on Appendix S7 of the International Telecommunication Union Radio Regulations and certain recommendations of the ITU Radiocommunication Sector." The applicable ITU recommendations are not specified, and Appendix 7 (formerly Appendix S7) refers to recommendation SM.1448, but does not refer to recommendation SF.1006. Appendix 7 and SM.1448 specify methods for calculating the minimum and maximum coordination contours, but do not specify calculation methods for individual interference cases. SM.1448 does consider multiple interferers, but the number considered in this band is only two, rather than the actual number, which may be many more. SM.1448 Table 15. SF.1006 contains a similar methodology. Moreover, FiberTower in the past has taken the

position that aggregate interference is not a reasonable concern. Reply Comments of FiberTower, p. 5 (June 21, 2007).

2. MSV can add extra shielding if needed at a small fraction of the cost of an earth station.

The two sites MSV is planning to use for its United States earth stations are at existing gateway facilities that were selected, in large part, due to their existing natural shielding and distance from the nearest city center. One of the planned sites is in a hilly depression that blocks low-elevation visibility in virtually all azimuths. At the other planned site, a hill directly in front of the proposed antenna locations is low enough to permit MSV's antennas to have visibility to the geostationary arc but high enough to shield all direct-path terrestrial transmissions along an azimuthal arc approximately 120 degrees in front of the planned antennas. Due to the density of the antennas and buildings already located at this second facility, there is no land available for an additional man-made berm towards the rear of the planned antenna locations.

MSV's concern is with the need for a long-term, stable interference environment around its earth stations. This concern stems from the key role these earth stations play in the operation of MSV's next-generation system, which will cost more than one billion dollars to deploy and will be used to provide significant capacity for public safety communications in remote areas and areas in which terrestrial communications are either not functioning or are saturated. MSV has conducted an intensive process to select earth station sites that are as close to ideal as possible, consistent with the need for available skilled labor, reliable power and high-capacity backhaul communications. After selecting those sites, it must design the spacecraft feed elements to communicate specifically with those locations and cannot move the gateways to another location any significant distance from the planned sites without materially degrading the quality of service. All MSV seeks at this point is that the Commission's rules provide reasonable protection against new terrestrial facilities that are proposed after our sites have been planned.

3. MSV's predecessor, American Mobile Satellite Corporation, expressed confidence 18 years ago that it could operate in the planned Ku band without restricting Cable Antenna Relay Service operations.

Eighteen years ago, this band was not widely used. That has changed and, with FiberTower's proposal and other developments, is likely to change even further. MSV supports the increased use of the band for backhaul operations and stands to benefit from it for operations from its ATC base station. The reality, however, is that widespread proliferation of microwave facilities in the band increases the potential for aggregate interference to the handful of feeder link earth stations (3-5) with which the band is shared.

4. *Adoption of rules to better protect MSS feeder link earth stations from aggregate interference is barred by the Administrative Procedures Act because it is outside the Notice of Proposed Rulemaking.*

In fact, the NPRM specifically raised that question of aggregate interference and sought broad comment, including proposals for dealing with the issue, as follows:

In particular, we seek comment on the risk that aggregate interference poses to earth stations. Commenting parties may suggest ways to avoid or mitigate instances of aggregate interference. Parties should also discuss the sufficiency of existing industry practices, coordination requirements, and interference criteria to address instances of aggregate interference.

NPRM at ¶23. Here, the Commission's request for comments regarding ways to avoid or mitigate aggregate interference created notice that an Order might lead to rules governing all users of the band. Because the issue involves aggregate interference, it necessarily includes all fixed wireless operations in the band, including both proponents of smaller microwave dishes as well as existing operators of conventional-sized dishes. Any party with a position regarding the risks of aggregate interference in the band therefore had reasonable notice and an opportunity to participate in the rulemaking by filing comments, reply comments, or supplemental comments.

The fact that MSV proposed a specific interference mitigation plan in reply comments is legally irrelevant. In another similar factual situation, the FCC found it had provided sufficient notice in an NPRM to justify relying on an *ex parte* presentation made only three weeks before the order was adopted. *In the Matter of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure*, 12 FCC Rcd 16606, 16632 (Oct. 9, 1997). *See also In the Matter of Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, 12 FCC Rcd 13942, 13959 (Sept. 16, 1997) (finding that there was sufficient notice for a safe harbor implemented in response to an NPRM in part because "the suggestion of a Part 15 safe harbor was discussed in publicly-filed *ex parte* submissions").

MSV is not trying to block the development of the 10.7-11.7 GHz band for Fixed Service operations. It is convinced that the protection that it seeks will have little or no practical impact on the deployment of tens of thousands of Fixed Service facilities in the band, given the absence of any impact on existing microwave deployments, the tiny

geographic area affected and the availability of another 500 MHz of spectrum in the band that would be almost entirely unaffected.

Very truly yours,

/s/

Jennifer A. Manner

cc: Fred Campbell
Cathy Massey
John Schauble
Julius Knapp
Bruce Romano
Alan Stillwell
Robert Nelson
Karl Kensinger
Erika Olsen
Bruce Gottlieb
Angela Giancarlo
Renee Crittendon
Wayne Leighton
Mitchell Lazarus, Counsel to FiberTower

