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August 29, 2007

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

Re: WT Docket No. 07-54, *Antenna Requirements for the 10.7 – 11.7 GHz Band*

Dear Ms. Dortch:

On behalf of FiberTower Corporation, I am electronically filing this written *ex parte* communication pursuant to Section 1.1206(b)(1) of the Commission's Rules.

This responds to the August 21 and August 27 filings by Mobile Satellite Ventures LP ("MSV") in support of its request for extraordinary protection of 11 GHz feeder link earth stations from fixed service operations.

MSV's August 21 filing enumerates several sources of interference from fixed service links into an unspecified site in Houston. MSV states that its consultant identified 59 interference sources, 19 of which exceed the threshold that MSV has requested as a protection criterion.

A casual reading of MSV's submission might leave the impression that its earth station is being subjected to crippling interference.

In fact, however, the earth station does not exist. At worst, the site may be one where MSV is considering building an earth station. If so, the study should have alerted MSV that the site may be unsuited to its purposes.

The 11 GHz band is shared co-equally between the fixed service and international fixed satellite operators. MSV, a mobile satellite provider, uses the band under a waiver.¹

Sharing in the band operates on a first-come, first-served basis. Either a fixed service operator or an earth station operator can seek to coordinate any location. The applicant must protect any incumbents, and must accept any interference from incumbents. American Mobile Satellite Corporation (AMSC), MSV's predecessor in interest, expressly accepted this arrangement when it requested authority to use the band.²

The "interference" that MSV complains of in Houston consists of lawful signals from properly coordinated fixed service links. Not having been there first, MSV has no basis for objecting to their presence. Its doing so is outrageous.

If the signal levels at the Houston site are too high for MSV's proposed installation, it can either shield the site or construct elsewhere.

* * * *

MSV's filing of August 27 addresses four points made by FiberTower.

FiberTower stands by its assertion that existing coordination procedures give adequate protection to MSV's earth stations. MSV insists that the procedures do not account for exposures from more than two fixed service links.³ The Commission's policies and rules offer no known precedent for acting on such a claim.

Moreover, MSV overlooks that fixed service antennas, even the proposed 0.61 meter units, are highly directional. That is, they emit nearly all of their energy along the axis of the

¹ *Land Mobile Satellite Service for the Provision of Various Common Carrier Services*, 4 FCC Rcd 6041 at para. 68 (1989).

² *Id.* at para. 67.

³ Letter from Jennifer A. Manner, MSV, to Marlene H. Dortch, Secretary, FCC, at 1 (filed Aug. 27, 2007). MSV had previously claimed no allowance for *any* multiple exposures. *E.g.*, Letter from Glenn S. Richards to Marlene H. Dortch, Secretary, FCC, attachment at slide 7 (filed Aug. 10, 2007).

main beam, and very little in other directions.⁴ A fixed service antenna therefore can be an interference threat only if it is aimed directly (or very nearly) at the earth station. MSV concedes that coordination procedures allow for two such simultaneous occurrences, which is unlikely. More than two is unlikely to a near-astronomical degree. Moreover, multiple fixed service antennas all aimed at the same point would tend to interfere with one another, and so could not be coordinated.

Second: A shared-band applicant wishing to locate an earth station where interference would otherwise be too high has the option of shielding its earth station. MSV rejects that option because the two sites it wishes to use have insufficient room for one type of shielding.⁵ There is no precedent to give a user in a shared band an *a priori* right to any particular site, and the Commission should not distort its rules to create one. If the two sites that MSV has in mind are unsatisfactory, it should look elsewhere. Vast areas of the country have little or no 11 GHz activity and would offer MSV problem-free coordination.

Third, MSV disavows its predecessor's acceptance of the existing coordination rules on the ground that fixed service usage of the band has increased since then.⁶ But that increase was wholly predicable, as the Commission had long before limited earth station usage specifically in order to encourage fixed service deployment.⁷ Dissatisfied with the foreseeable results of its predecessor's decision, MSV now seeks to upend a long-established and successful policy.

⁴ The NPRM proposes a minimum antenna gain for these antennas of 33.5 dBi. This means that power emitted along the antenna axis must be at least 2,239 times the average power emitted in all directions. Putting this in reverse, the power in any direction *except* along the main axis is necessarily very low.

⁵ Letter from Jennifer A. Manner, MSV, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Aug. 27, 2007).

⁶ *Id.*

⁷ Amendment of Part 2 of the Commission's Rules, 39 F.C.C.2d 959 at para. 37 (1973) (anticipated profusion of earth stations coupled with growth of terrestrial microwave stations expected to create severe problems if domestic satellite service were permitted co-use of 10.7-11.7 GHz). *See also Establishment of Policies and Service Rules for the Non-Geostationary Satellite Orbit* (NPRM), 16 FCC Rcd 9680 at para. 45 (2001) (Commission restricted earth station usage in shared bands to "allow[] the continued use and growth of terrestrial operations in those bands.")

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Finally, we are unpersuaded that the NPRM gave fair notice of MSV's proposal. The U.S. Court of Appeals has held: "Notice of a proposed rule must include sufficient detail on its content and basis in law to allow for meaningful and informed comment."⁸ The same court had earlier explained:

The purpose of the comment period is to allow interested members of the public to communicate information, concerns, and criticisms to the agency during the rule-making process. *If the notice of proposed rule-making fails to provide an accurate picture of the reasoning that has led the agency to the proposed rule, interested parties will not be able to comment meaningfully upon the agency's proposals.* As a result, the agency may operate with a one-sided or mistaken picture of the issues at stake in a rule-making.⁹

Nothing in the NPRM meets these tests as to MSV 's requests.

In short, MSV's filing does not support its demands for special protection against fixed service operations.

Please do not hesitate to call with any questions.

Respectfully submitted,

Mitchell Lazarus
Counsel for FiberTower Corporation

cc: Courtesy service list

⁸ *American Medical Ass'n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995).

⁹ *Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 530 (D.C. Cir. 1982) (emphasis added), *cert. denied*, 459 U.S. 835 (1982). See *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 55 (D.C. Cir. 1977) (notice must provide sufficient information to permit "adversarial critique"), *cert. denied*, 434 U.S. 829 (1977).

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