



March 5, 2010

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

Re: **Written Ex Parte Presentation**  
**ET Docket Nos. 04-186 & 02-380; GN Docket No. 09-51**

Dear Ms. Dortch:

The Wireless Internet Service Providers Association (“WISPA”) submits this written ex parte presentation to strongly oppose the request of FiberTower Corporation, Sprint Nextel Corporation (“Sprint”), the Rural Telecommunications Group, Inc. (“RTG”), COMPTTEL and the Wireless Communications Association International, Inc. (“WCAI”) (collectively, the “FiberTower Group”) asking the Commission take expeditious action to appropriate a significant amount of TV white space spectrum for licensed point-to-point backhaul in advance of the March, 2010 deadlines for BTOP and BIP applications.<sup>1</sup> While WISPA agrees that the Commission should act quickly to resolve pending TV white space petitions for reconsideration – including a petition filed by WISPA<sup>2</sup> – the Commission should *not* now resolve one aspect of that proceeding while other important and related public interest questions remain before the Commission. Moreover, as WISPA has previously explained, using TV white space spectrum for licensed point-to-point backhaul would severely limit the use of TV white spaces for fixed point-to-multipoint use to serve rural, unserved and underserved areas of the country, to the detriment of the public.<sup>3</sup> The FiberTower Group’s request should be denied.

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<sup>1</sup> See Ex Parte Presentation dated February 2, 2010 from Thomas Jones, Counsel to FiberTower, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-51 and ET Docket Nos. 02-380 & 04-186; Ex Parte Presentation dated February 11, 2010 from Thomas Jones, Counsel to FiberTower, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-51 and ET Docket Nos. 02-380 & 04-186; Notice of Ex Parte Presentation dated March 1, 2010 from Michele C. Farquhar, Counsel to Sprint and Special Counsel to FiberTower and RTG, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-51 and ET Docket Nos. 02-380 & 04-186 (collectively, the “FiberTower Group Presentations”). The deadline for Round 2 BTOP applications is March 26, 2010 and the deadline for Round 2 BIP applications is March 29, 2010.

<sup>2</sup> See Petition for Reconsideration of WISPA, ET Docket Nos. 04-186 & 02-380, filed March 19, 2009 (“WISPA Petition”); Consolidated Opposition to Petitions for Reconsideration of WISPA, ET Docket Nos. 04-186 and 02-380, filed May 8, 2009 (“WISPA Opposition”); Consolidated Reply to Opposition to Petitions for Reconsideration of WISPA, ET Docket Nos. 04-186 & 02-380, filed May 18, 2009. Notably, WISPA opposed the FiberTower Group’s proposals for licensing of TV white spaces for point-to-point uses. See WISPA Opposition at 11-12.

<sup>3</sup> WISPA observes that the July 14, 2009 Request for Expedited Consideration filed by the FiberTower Group (less WCAI) does not contain a certificate of service and was not served on WISPA or, presumably, other parties that filed petitions for reconsideration of the *Second Report and Order*.

## *Overview*

In its recent ex parte presentations, the FiberTower Group reiterates its request for the Commission to authorize up to six vacant TV white space channels on Channels 21-35 and 39-51 for point-to-point use pursuant to frequency coordination procedures under Part 101 of the Commission's rules.<sup>4</sup> In rural counties, point-to-point uses would be authorized on channels second or greater adjacent to TV broadcast stations at a maximum power level of 35 dBW/6 MHz EIRP. In all other counties, point-to-point uses would be authorized on third or greater adjacent channels at a maximum power level of 24 dBW/6 MHz EIRP. The FiberTower Group proposes no limits on out-of-band emissions and proposes a maximum 25-degree antenna beamwidth. Licensees would have 18 months to place licensed sites in operation. The FiberTower Group asks the Commission to authorize this spectrum on an expedited basis.<sup>5</sup>

## *Discussion*

### **I. The Commission Should Not Grant The Request For Expedited Action Unless It Simultaneously Acts On All Pending Petitions For Reconsideration.**

By proposing to extract its request for expedited action from the numerous issues pending before the Commission on reconsideration, the FiberTower Group is essentially asking the Commission to resolve a portion of the issues subject to reconsideration without resolving all of the issues the Commission must consider. All told, there are approximately 17 petitions for reconsideration pending. Far from being a "narrow proposal," as it claims, the FiberTower Group's submissions actually seek action on interrelated, complicated and opposed issues that have been pending before the Commission for almost a year. For instance, WISPA has asked the Commission to authorize higher transmitting antennas, lower receive antennas and higher power on certain channels in certain areas. By adopting the FiberTower Group's proposal – and only its proposal – the Commission would be implicitly acting on the WISPA Petition and other petitions. In light of the consequences, adoption of the FiberTower Group's request for expeditious action would be inappropriate.

### **II. Expeditious Action Likely Would Not Benefit BTOP And BIP Applicants.**

The FiberTower Group ignores the practical realities that would result from expeditious adoption of its proposal. Assuming *arguendo* the Commission acted as the FiberTower Group requests, the Commission would need to issue a Third Report and Order adopting final technical, operating and licensing rules for point-to-point use, make such rules effective in sufficient time

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<sup>4</sup> See note 1, *supra*. See also FiberTower Petition for Reconsideration, GN Docket No. 09-51 and ET Docket Nos. 02-380 & 04-186, filed March 19, 2009, at 1-2; Notice of Ex Parte Presentation dated October 29, 2008 from Michele C. Farquhar, Counsel to Sprint and Special Counsel to FiberTower and RTG, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-51 and ET Docket Nos. 02-380 & 04-186.

<sup>5</sup> See Attachment to FiberTower Group Presentations, "Proposal for Limited Fixed Licensed Point-to-Point use of the TV White Spaces for Backhaul to Rural Areas."

to permit the spectrum to be included in and deployed in connection with BTOP and BIP applications, identify available spectrum in each county, adopt coordination procedures, identify frequency coordinators and allow for the filing, processing and granting of applications. Necessarily, the time to complete these tasks would not permit BTOP and BIP applicants to reliably indicate in their applications that they have sufficient and timely access to spectrum that would enable grant or loan funds to be awarded to them. Given these circumstances, it becomes clear that the FiberTower Group is more interested in securing spectrum for long-term use than it is in assisting BTOP and BIP applicants.

### **III. The FiberTower Group Proposal Suffers From Substantive Flaws And Is Predicated On Poor Engineering Practice And Should Not Be Granted.**

Aside from these defects, the FiberTower Group's proposal suffers from a number of substantive flaws. First, licensing TV white space spectrum for exclusive point-to-point use would be contrary to the purpose behind allocation of the spectrum. In the *Second Report and Order*, the Commission expressly stated that:

because transmission on frequencies in the TV bands are less subject to propagation losses than transmission losses in the spectrum bands where existing low power broadband operations are permitted, *i.e.*, the 2.4 GHz and 5 GHz bands, we anticipate that allowing unlicensed operation in the TV bands will benefit wireless internet service providers (WISPs) by extending the service range of their operations. This will allow wireless broadband providers that use unlicensed devices to reach new customers and improve their services in rural areas.<sup>6</sup>

The FiberTower Group seeks to undermine this objective with a proposal that would allocate a significant amount of spectrum for exclusive, licensed point-to-point use, thereby denying access to white space spectrum for fixed, last-mile use in many areas of the country.

Second, the effect of licensing high-power point-to-point services is not limited to a loss of co-channel spectrum between the two end points, as the FiberTower Group would have the Commission believe. To the contrary, the proposal also would limit uses *beyond* the two end-points and *outside* the link paths. The FiberTower Group proposes for rural areas power levels of almost 19,000 watts (19 kW) ERP across a 36 MHz channel (*i.e.*, the equivalent of 35 dBw/6 MHz EIRP). At this high power level, signals will travel hundreds of miles *beyond* both ends of every link, thus denying use of those frequencies for WISP use. Moreover, the proposed 25-degree half-power antenna beamwidth pattern is exceedingly wide and will also limit last-mile fixed deployments in substantial areas to the *sides* of each link. The FiberTower Group's March 1 Ex Parte Presentation disingenuously misrepresents the interference potential of the Paraflector

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<sup>6</sup> *Unlicensed Operation in the TV Broadcast Bands*, Second Report and Order and Memorandum Opinion and Order, FCC 08-260, ET Docket Nos. 02-380 & 04-186 (rel. Nov. 14, 2008) ("*Second Report and Order*"), at ¶¶2 & 32.

antennas which are, according to the manufacturer, “professional receive and low-power transmit antennas.” According to the manufacturer, these antennas have a maximum power-handling capacity of 100 watts and do not possess the “high-power” transmit capabilities that the FiberTower Group proposal asserts. Further, the wide radiation pattern of this antenna and other similar UHF television antennas represents poor engineering practice and is completely inappropriate for high-power point-to-point use. Rather than using a wide-beamwidth antenna combined with high transmitter power levels as the FiberTower Group proposes, proper engineering practice is to use lower transmitter power combined with higher-gain, narrower-beamwidth antennas. The FiberTower Group’s proposal will create 60-degree (or wider) wedge-shaped interference and exclusion zones originating from each antenna extending forward, off to the sides of, and extending far beyond each end of every link. At the far end of each link, this interference zone will be an estimated 120 degrees wide and will extend, as noted above, several hundred miles beyond the end of the link. In addition, the FiberTower Group does not propose any out-of-band emission limits, so adjacent-channel use by others likely would be compromised. Consequently, licensing of up to six channels for exclusive point-to-point use will unnecessarily and inefficiently tie up white space spectrum across a large area – much more than 36 megahertz and much more than just the link paths – such that it will be unavailable for WISP use. For the FiberTower Group to suggest that its proposal is “limited” grossly mischaracterizes the harmful effects that exclusive licensed point-to-point links will have on fixed wireless broadband deployment.

Third, while affordable access to “middle mile” facilities is among the most significant obstacles to fixed broadband deployment to rural areas,<sup>7</sup> there are less restrictive means by which the Commission can and should permit point-to-point uses of TV white space spectrum. In advocating higher power to permit both point-to-multipoint and point-to-point uses under a “licensed lite” spectrum allocation process, WISPA stated in the WISPA Opposition that:

Although WISPA agrees that affordable access to the Internet backbone is lacking in rural areas, WISPA believes that setting aside up to 36 MHz of spectrum in a given area is an inefficient use of TV white space. *Instead, point-to-point backhaul and connectivity services can be implemented in the TV white spaces under WISPA’s proposal to allow up to 20 watts transmitter power.* By requiring fixed TVBD operators to examine the geolocation database and design non-interfering facilities – a key element of WISPA’s “licensed-lite” proposal – point-to-point uses and WISP deployments can operate in harmony without interference and without wasting spectrum.<sup>8</sup>

Rather than address this approach, the FiberTower Group steadfastly adheres to its unreasonable position to the detriment of consumers that lack affordable access to fixed broadband services.

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<sup>7</sup> In the National Broadband Plan proceeding, WISPA has written extensively about the need for affordable “middle mile” access. See, e.g., Comments of WISPA in response to Public Notice, “*Comment Sought on Impact of Middle and Second Mile Access on Broadband Availability and Deployment*,” DA 09-2186, GN Docket Nos. 09-47, 09-51 & 09-137 (rel. Oct. 8, 2009), filed Nov. 4, 2009.

<sup>8</sup> WISPA Opposition at 12 (emphasis added) (footnote omitted). See also WISPA Petition at 15-16.

Fourth, the participation of Sprint, RTG and WCAI confirms that the FiberTower Group's motive is to make point-to-point services available primarily to *mobile* wireless interests, not *fixed* wireless interests.<sup>9</sup> Given that there are millions of households without access to fixed broadband, the possibility that licensed spectrum will be hoarded by mobile wireless interests is readily apparent. Mobile wireless applicants could simply apply for links on all six available channels on the effective date of the proposed new rules, and would lock up those sites for 18 months without having to serve a single customer and without being required to provide "middle mile" connectivity to WISPs and others seeking spectrum access. The FiberTower Group proposal is open to such abuse, which would have a permanent adverse impact on the availability of point-to-multipoint wireless connectivity for last-mile broadband service.

### ***Conclusion***

In sum, while WISPA agrees that the problems of "middle mile" access must be expeditiously addressed, WISPA strongly disagrees with the FiberTower Group's proposals to: (a) segregate consideration of only its proposal from interrelated and opposing petitions for reconsideration pending before the Commission, and (b) allocate up to 36 megahertz of spectrum nationwide solely for licensed point-to-point use without due consideration of the interference consequences and in opposition to WISPA's more reasonable shared-use approach.

Pursuant to Section 1.1206, this written ex parte presentation is being electronically filed via ECFS.

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<sup>9</sup> See, e.g., Letter dated October 28, 2008 from Kurt Van Wagenen, President and CEO of FiberTower, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-51 and ET Docket Nos. 02-380 & 04-186 (emphasizing need for *all* mobile services to have access to backhaul infrastructure); Notice of Ex Parte Presentation dated October 28, 2008 from Michele C. Farquhar, Counsel to Sprint and Special Counsel to FiberTower and RTG, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-51 and ET Docket Nos. 02-380 & 04-186 (same).

Please contact either of us or WISPA's counsel, Stephen Coran, at (202) 463-4310 or scoran@rinicoran.com, if there are any questions.

Respectfully submitted,

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