

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Part 27 of the)
Commission's Rules to Govern the) WT Docket No. 07-293
Operation of Wireless Communications)
Services in the 2.3 GHz Band)

**REPLY COMMENTS
OF THE WCS COALITION**

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April 29, 2010

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EXECUTIVE SUMMARY

The record does not support adoption of the WCS performance requirements proposed by the Commission. To the contrary, the comments filed in response to the *Performance Public Notice* corroborate the WCS Coalition's view that, were the Commission to adopt the proposed performance requirements and couple them with the proposed death penalty for those licensees that fail to satisfy the benchmarks within the allocated time, investment will be stifled and the objectives of the National Broadband Plan frustrated.

It is impossible to answer the question "how long will it take for WCS licensees to meet the proposed benchmarks" when the technical and service rules have not yet been determined and question remain regarding proposed MAT coordination processes that impact 25% of the U.S. population (and more than 50% of the population of several MEAs). However, the WCS Coalition believes that, were the Commission to adopt the technical and service rules proposed in the *Technical Public Notice*, resolve the pending renewal and substantial service matters promptly, exclude the populations residing within an MAT coordination zone *and* adopt a "keep what you use" policy that promotes investment, it would be acceptable to require a WCS license to provide mobile or fixed point-to-multipoint service to 35% of the population of its authorized service area within five years of the effective date of new rules, and 70% of the population of its authorized service area within seven and one half years.

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The WCS Coalition, by its attorneys, hereby submits its reply comments with respect to the Commission’s *Public Notice* proposing to revise the performance requirements applicable to the 2.3 GHz band Wireless Communications Service (“WCS”).¹

I. INTRODUCTION.

The record elicited by the *Performance Public Notice* confirms the general thesis of the WCS Coalition’s initial comments – the technical and service rules that ultimately will govern the WCS and satellite Digital Audio Radio Service (“SDARS”) bands and the ongoing pendency of renewal applications and substantial service showings submitted by WCS licensees have a critical

¹ Federal Communications Commission Requests Comment on Revision of Performance Requirements for 2.3 GHz Wireless Communications Service, *Public Notice*, FCC 10-46 (rel. Mar. 29, 2010) (the “*Performance Public Notice*”). Sirius XM Radio Inc. (“Sirius XM”) filed comments that do not address the substance of the *Performance Public Notice*, but instead attack efforts by the WCS community to secure an extension of the upcoming July 21, 2010 deadline for demonstrating substantial service. See Comments of Sirius XM Radio Inc., WT Docket No. 07-293 (filed Apr. 21, 2010). In so doing, Sirius XM has mischaracterized the arguments in support of an extension, distorted the facts, and has sought to require those currently building out to satisfy the requirement to undertake a coordination process with Sirius XM that is not required by the rules. These issues will be addressed in a separate filing. Note, however, that Sirius XM’s attempt to impose a new coordination requirement on WCS licensees is illustrative of how it seeks to morph this proceeding from one intended to facilitate mobile deployment by WCS into one that provides additional protection to SDARS from fixed facilities that WCS has been authorized to construct since 1997. The fact is that all of the facilities being constructed by WCS licensees today comport with the technical rules adopted in 1997, rules that were in place when Sirius XM’s predecessor’s acquired their spectrum. If Sirius XM has designed its systems such that its subscribers suffer interference from these WCS facilities, Sirius XM should be looking inward for a solution, rather than seeking to impose additional requirements on WCS that are unrelated to mobile deployments.

and direct impact on the ability of WCS licensees to deploy new broadband services in the 2.3 GHz band.² Not surprisingly, the uncertainty that swirls around WCS was a theme sounded by every party that commented on the proposed WCS performance requirements.³ Indeed, subsequent to the submission of comments on the *Performance Public Notice*, that uncertainty has only increased, as the comments filed by Sirius XM in response to the staff's proposed technical rules⁴ propose self-serving rules that, if adopted, would cloud WCS's future utility.⁵ Indeed, Sirius XM even goes so far as to challenge the Commission's authority to adopt the technical and service rules proposed in the *Technical Public Notice*.⁶ While the WCS Coalition intends to respond to Sirius XM's flawed technical and legal analyses separately, for present purposes suffice it to say that its latest arguments highlight the degree to which WCS licensees continue to face regulatory uncertainty.

² See Comments of the WCS Coalition, WT Docket No. 07-293, at 3-5 (filed Apr. 21, 2010) ("WCS Coalition Comments").

³ See Comments of Broadband South, LLC, WT Docket No. 07-293, at 3-5 (filed Apr. 21, 2010); Joint Comments of Green Flag Wireless, LLC, CWC License Holding, Inc. and James McCotter, WT Docket No. 07-293, at 2, 4-5 (filed Apr. 21, 2010) ("Green Flag Comments"); Comments of Horizon Wi-Com, LLC, WT Docket No. 07-293, at 5-6 (filed Apr. 21, 2010) ("Horizon Comments"); Comments of Stratos Offshore Services Company, WT Docket No. 07-293, at 2 (filed Apr. 21, 2010) ("Stratos Comments").

⁴ See Commission Staff Requests That Interested Parties Supplement the Record on Draft Interference Rules for Wireless Communications Service and Satellite Digital Audio Radio Service, *Public Notice*, DA No. 10-592, at 1 (rel. Apr. 2, 2010) ("*Technical Public Notice*").

⁵ For example, in addition to the issues identified in the WCS Coalition's initial comments (*see* WCS Coalition Comments at 8-9), Sirius XM now urges the Commission to ban mobile and fixed consumer premises equipment from the entire C and D Block. *See* Comments of Sirius XM Radio Inc., WT Docket No. 07-293 *et al.*, at 19 (filed Apr. 23, 2010) ("Sirius XM Technical Comments"). The argument that fixed CPE should be banned from the C and D Block entirely is particularly bizarre given that since 1997, WCS operators have been permitted to deploy fixed CPE at up to 2000 watts peak EIRP under Section 27.50(a)(1) of the Commission's Rules (subject, of course, to the rules designed to protect humans from RF exposure). Sirius XM also suggests new restrictions on other fixed WCS facilities that are totally unrelated to the use of the WCS spectrum for mobile communications. *See id.* at 21-22, 32. Since these proposed new restrictions go to the heart of business plans that are being implemented in the absence of out-of-band emissions limits that facilitate mobility, they add an entirely new level of uncertainty regarding WCS and its utility.

⁶ *See id.* at 42-52.

While the WCS Coalition still would prefer consideration of new performance requirements once the technical and service rules governing WCS operations are settled,⁷ the remainder of these comments will focus on the substance of WCS performance requirements.⁸

II. DISCUSSION.

At this juncture, the record does not support adoption of the WCS performance requirements proposed by the Commission. To the contrary, the comments filed in response to the *Performance Public Notice* corroborate the WCS Coalition's view that, were the Commission to adopt the proposed performance requirements and couple them with the proposed death penalty for those licensees that fail to satisfy the benchmarks within the allocated time, investment will be stifled and the objectives of the National Broadband Plan frustrated. As one commenting party noted, "artificial build-out schedules are generally to be discouraged because construction and service should flow naturally from market demand – not be driven by government fiat."⁹ The WCS

⁷ See WCS Coalition Comments at 26 ("the Commission should first finalize the technical and service rules for the band, resolve the long pending renewal applications and substantial service showings, and adopt [a further notice of proposed rulemaking] so that interested parties can comment on – and the Commission can ultimately determine – appropriate and reasonable performance benchmarks for the WCS band."). In addition to the need for certainty regarding the technical and service rules that will govern WCS operations, another common theme of comments filed is that the *Performance Public Notice* provides no insight whatsoever into the rationale for the proposed rules. As one party put it, "we cannot discern what problem the new rules are intended to solve, and therefore cannot evaluate whether they are likely to accomplish that purpose." Green Flag Comments at 2. See also Horizon Comments at 5 ("the Public Notice merely sets forth proposed numerical standards without providing any rationale as to why they are at the proper level."); WCS Coalition Comments at 13 ("because the Commission has proposed the new WCS performance requirements in a brief public notice, rather than via a more traditional formal notice of proposed rulemaking, neither the WCS community nor the public has been provided with any transparency as to the thinking behind the proposals in the *Performance Public Notice*.").

⁸ Make no mistake, there is absolutely no reason given the detailed record developed over the past thirteen years for the Commission to further postpone consideration of the issues raised in the *Technical Public Notice*. Unlike these oft-debated technical issues, the question of imposing additional performance obligations on WCS licensees was not raised until just prior to the *Performance Public Notice*. See Letter from Paul J. Sinderbrand, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 07-293 (filed Mar. 16, 2010). Moreover, a delay in the adoption of technical rules undermines the entire purpose of the *Further Notice* – establishing performance requirements once the regulatory hurdles to deployment are known.

⁹ Green Flag Comments at 4.

Coalition agrees, and continues to believe that “the Commission must temper its desire to see rapid widespread deployment with an appreciation that overly aggressive performance requirements unsupported by reasonable business plans will actually deter the very investment and innovation they are intended to promote.”¹⁰

A. The Proposed Rules Do Not Afford WCS Licensees Adequate Time To Satisfy The Proposed Benchmarks.

As the WCS Coalition noted in its initial comments, it is impossible to answer the question “how long will it take for WCS licensees to meet the proposed benchmarks” when the technical and service rules have not yet been determined. Those rules will dictate equipment availability, impose delays due to coordination requirements, and establish limitations on network design, among other elements that must be factored into deployment schedules. However, in its initial comments, the WCS Coalition attempted to identify the more glaring flaws in the *Performance Public Notice* and to provide an assessment of the impediments to widespread deployment.

In response to the *Performance Public Notice*, the WCS Coalition advised that were the Commission disposed to adopt the WCS Coalition’s original proposals to govern WCS mobile operations and SDARS terrestrial repeaters, mobile broadband devices developed for the global marketplace could be modified to comply with the new rules in reasonably short order and likely could start becoming available for the U.S. market within a year or so of the adoption of final rules. In its subsequent comments in response to the *Technical Public Notice*, the WCS Coalition advised the staff that, “given the nature of the staff’s proposals limiting WCS power and OOB, the WCS Coalition suspects that if the staff’s proposals are adopted (along with the changes suggested by the WCS Coalition . . .), compliant equipment could start to become available for the U.S. market within approximately twelve-to-eighteen months, with shipments in volume possible several months

¹⁰ WCS Coalition Comments at 4.

thereafter.”¹¹ However, the WCS Coalition has also warned that the timeline will increase substantially if the Commission’s final rules require significant redesign of the 2.3 GHz devices that already are available globally.¹²

Moreover, the WCS Coalition reminded the Commission that equipment availability is only one of many hurdles to overcome before new service offerings can become widespread. In addition to delays associated with long-unresolved renewal and substantial service matters and coordination with mobile aeronautical telemetry (“MAT”), there were a variety of other tasks to be accomplished. In particular, the WCS Coalition reminded the Commission that in its decision to allow 700 MHz licensees four years, rather than three years, to meet their interim benchmark, the Commission concluded:

We are concerned that the proposed three-year benchmark may not provide sufficient time for providers of advanced services to acquire and deploy 4G technologies. Such 4G network build-out will require the commercial availability of end-to-end integrated systems, including subscriber terminals, radio access network, core network, and transport network, in addition to flexible enhanced services and integrated back-office and customer support centers. To achieve a commercial availability benchmark, teams of service providers, vendors and integrators must complete several parallel processes, including completion of the standards, product development, field trials, interoperability testing and larger scale trials, followed by deployment. Such an implementation is challenging and it may not be possible for carriers to complete these tasks prior to the end of the three-year benchmark that was proposed in the *700 MHz Further Notice*.¹³

The WCS Coalition was hardly alone in noting that the proposed WCS timelines were difficult to square with precedent. Horizon Wi-Com LLC (“Horizon”), Green Flag Wireless, LLC, *et al.* (“Green Flag”), and Stratos Offshore Services Company (“Stratos”) all took issue with the

¹¹ Comments of the WCS Coalition, WT Docket No. 07-293 *et al.*, at 4 (filed Apr. 23, 2010).

¹² WCS Coalition Comments at 6.

¹³ WCS Coalition Comments at 14, *quoting* Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, 22 FCC Rcd 15289, 15350 n.385 (2007) (“*700 MHz Performance Order*”).

Commission's proposal to impose on WCS licensees a shorter timeline for meeting aggressive build out requirements than was afforded to 700 MHz licensees.¹⁴ As Stratos correctly notes:

[t]he Commission adopted the more lengthy timeframes applicable to the interim and final construction benchmarks for 700 MHz licensees because it was "persuaded that a three-year build-out requirement would have a disproportionate impact on new entrants who have no existing networks or customers," and also because it sought to allow "additional time for the development of new technologies that might be employed in this spectrum and [to give] licensees sufficient time to develop new services." However, the Commission does not appear to take these same factors into consideration in the WCS context¹⁵

The implications of the Commission's proposal to establish coordination zones surrounding MAT facilities, and the potential to substantially delay, if not preclude, service were also a source of concern to the WCS community.¹⁶ Even the Aerospace and Flight Test Radio Coordinating Council has noted the potential for substantial delay, advising the Commission that "meeting the performance requirements may be challenging for WCS when accounting for the time required to accomplish proper coordination."¹⁷

Unfortunately, this problem is far from isolated. In its initial filing, the WCS Coalition noted that approximately 76 million Americans – 25% of the population – appear to be within the proposed 45 km MAT coordination zones. In many MEAs, however, the situation is far more dire. Looking solely at the 45 km coordination zones associated with non-federal MAT facilities (the

¹⁴ See Horizon Comments at 5; Stratos Comments at 6 ("the Commission should extend the construction timeframes to, at a minimum, make them consistent with the timeframes adopted for the 700 MHz C Block."); Green Flag Comments at 4; WCS Coalition Comments at 14-15.

¹⁵ Stratos Comments at 6, *citing 700 MHz Performance Order*, 22 FCC Rcd at 15350.

¹⁶ See Horizon Comments at 5 n.7; WCS Coalition Comments at 8, 16-18.

¹⁷ Comments of Aerospace and Flight Test Radio Coordinating Council, WT Docket No. 07-293 *et al.*, at 7 (filed Apr. 23, 2010). The WCS Coalition notes that Sirius XM continues to advocate a series of onerous coordination requirements in response to the *Technical Public Notice*. See Sirius XM Technical Comments at 32-34. Sirius XM would have all WCS facilities, no matter where located, required to engage in prior coordination with Sirius XM. See *id.* at 22-23. Were this proposal to be adopted, no performance requirements for WCS would be appropriate, as there would be nowhere in the country that could deploy without Sirius XM's approval, and Sirius XM has made its aversion to operating adjacent channel to WCS under any circumstances crystal clear.

only markets for which precise coordinates of MAT facilities are available), the potentially affected population figures can be staggering. In the Phoenix MEA, at least 73% of the population is within the proposed 45 km coordination zones of non-federal MAT receivers, while over 68% of the population in the Los Angeles-San Diego MEA and almost 59% of the population in the Seattle MEA are impacted by non-federal coordination zones.

Although the precise location of federal MAT receivers is not known, when one makes reasonable estimates as to the precise location of federal MAT facilities based on the data that NTIA has made available, the scope of the problem is magnified:

MEA	MEA Name	Population Within 45 km of MAT	Total Population	% of MEA Affected
40	Phoenix	4,712,272	5,486,856	85.88%
44	Los Angeles-San Diego	20,935,696	24,607,011	85.08%
3	Buffalo	1,178,458	1,486,064	79.30%
11	Miami	5,238,426	6,921,701	75.68%
4	Philadelphia	5,252,085	8,677,952	60.52%
46	Seattle	3,022,975	5,097,328	59.31%
30	St. Louis	2,420,795	4,929,348	49.11%
35	Wichita	574,502	1,175,125	48.89%
5	Washington	4,501,108	9,424,479	47.76%
9	Jacksonville	1,333,059	2,794,958	47.70%
32	Dallas-Fort Worth	5,945,685	12,589,441	47.23%
33	Denver	2,456,076	5,374,871	45.70%
38	San Antonio	1,628,857	4,033,791	40.38%

And, the Commission cannot forget that these analyses understate the nature of the problem – the proposed coordination zone can be in excess of 45 km when there is radio line of sight between the proposed WCS base station and the MAT receiver. Thus, for example, to the extent that MAT interests have constructed their receivers high above ground, the proposed rule would afford them a coordination zone that could extend well beyond 45 km.

What this data suggests is that affording WCS licensees impacted by MAT coordination zones a small amount of additional time to complete construction and some reduction in coverage requirements will not be enough to provide those licensees with a reasonable opportunity to satisfy the performance requirements.¹⁸ Rather, the population residing within areas subject to MAT coordination should be excluded from the calculation of population-based performance requirements.¹⁹

Given these impediments, the WCS Coalition believes that, were the Commission to adopt the technical and service rules proposed in the *Technical Public Notice*, resolve the pending renewal and substantial service matters promptly, exclude the populations residing within an MAT coordination zone *and* adopt a “keep what you use” policy that promotes investment (as discussed below), it would be acceptable to require a WCS license to provide mobile or fixed point-to-multipoint service to 35% of the population of its authorized service area within five years of the effective date of new rules, and 70% of the population of its authorized service area within seven and one half years.²⁰

¹⁸ For example, reducing the final benchmark to 50% population coverage does little good for the licensees in the Phoenix, Los Angeles-San Diego, Buffalo, Miami, Philadelphia, and Seattle MEAs – even if they covered every single person outside the 45 km coordination zone, they would not meet the benchmark unless they can successfully coordinate with MAT.

¹⁹ In its comments, Green Flag urges the Commission to do as it did in the context of 700 MHz band licenses subject to geographic coverage requirements, and exclude government lands from any new WCS performance requirements. *See* Green Flag Comments at 6. The WCS Coalition agrees that, were the Commission to impose a geographic coverage requirement on WCS (which it has not proposed to do and which the WCS Coalition opposes), government lands should be excluded. However, government lands have a negligible population, and the proposal here is to impose a population coverage benchmark.

²⁰ For those WCS licensees electing to deploy point-to-point links, the WCS Coalition proposes that 15 links per million population could be required within five years, and 30 links per million population with seven and one-half years. In addition, as proposed by Stratos, the Commission should do as it has done in other services and adjust the point-to-point link requirements on a *pro rata* basis. *See* Stratos Comments at 3-4. The WCS Coalition also has no objection to Stratos’ proposal to include in the calculus all discontinued links that had been discontinued within the past year, so long as the link had been in service for at least a year. *See id.* at 4-5. In addition, none of the comments submitted in response to the *Performance Public Notice* are inconsistent with the WCS Coalition’s proposals: (a) that the Commission clarify that it intends for Section

While these benchmarks and deadlines might appear at first blush to be less aggressive than those adopted recently for the 700 MHz band C Block, the fact is that WCS licensees will have to build out far more infrastructure given the superior propagation characteristics at 700 MHz. As the WCS Coalition noted in its initial comments, when the Commission adopted the 700 MHz performance requirements, it justified more stringent requirements than those historically applied in other bands by noting that “[t]he unique propagation characteristics of this spectrum means that fewer towers will be needed to serve a given license area, as compared to providing service at higher frequencies, and thus large license areas may be served at lower infrastructure costs.”²¹ The National Institute of Standards and Technology (“NIST”) estimates that covering 100 square miles would require only one cell site at 700 MHz, but nine cell sites at 2400 MHz.²² This disparity alone suggests that WCS licensees will have a far tougher go of it than competitors in the 700 MHz band. And, as the WCS Coalition noted in its initial comments, the Commission has before it proposed restrictions on base station power limits, complex coordination processes and other technical and

101.141(a)(1) to serve as the payload requirement for WCS point-to-point links to apply against performance requirements; and (b) that point-to-point links constructed in good faith by WCS licensees prior to the adoption of final rules should be considered in assessing compliance with point-to-point link performance requirements, without regard to any payload requirements that were not applicable at the time of construction. *See* WCS Coalition Comments at 19-20. Indeed, the only other party to discuss the proposed payload requirements opposed them entirely, arguing that “[m]inimum payload requirements simply distort the market and possibly even penalize licensees who have built out in good faith with no conceivable advantage to the public.” Green Flag Comments at 7. Finally, some WCS licensees have deployed point-to-point links using frequency-division duplex (“FDD”) technology. If, contrary to the WCS Coalition’s Comments in response to the *Technical Public Notice*, the Commission does not limit the proposed bar on FDD technology in the lower portion of the WCS band to mobile base stations, fixed facilities should be grandfathered and should be counted toward any performance obligations.

²¹ *700 MHz Performance Order*, 22 FCC Rcd at 15348.

²² National Institute of Standards and Technology, *700 MHz Band Channel Propagation Model*, <http://www.nist.gov/itl/antd/emntg/700mhz.cfm> (last visited Apr. 29, 2010).

service rules that, if adopted, would further increase the number of WCS base stations required to provide coverage and slow the process of providing that coverage.²³

The Commission has recognized that it “do[es] not want to set regulatory standards so high that it is more likely to impede build-out than encourage development of the service.”²⁴ The record developed in response to the *Performance Public Notice* establishes that adoption of the proposals advanced in the *Performance Public Notice* will likely have just that unfortunate result.

B. To Promote Investment, The Commission Should Apply A “Keep What You Use” Policy To WCS Licensees That Do Not Achieve New Performance Benchmarks.

Those addressing the issue were unanimous in urging the Commission to abandon its proposal to impose a death penalty on WCS licensees that are unable to meet performance requirements, and replace it with a “keep what you use” approach similar to that applied to 700 MHz licensees.²⁵ Stratos succinctly identified the problem with the Commission’s approach:

[a] licensee could have constructed facilities covering 70% of the population of its market at the 60-month construction deadline, and its license would automatically be terminated throughout the market – including for facilities over which it is providing service to consumers. Stratos respectfully submits that such an egregious penalty could thwart investment in and deployment of WCS networks. Furthermore, requiring a licensee to cease providing service to subscribers over facilities that have been timely constructed is contrary to the public interest.²⁶

This result clearly cannot be squared with the National Broadband Plan’s desire to see WCS flourish as a vehicle for delivering wireless broadband services. As Green Flag correctly noted:

²³ See WCS Coalition Comments at 8-10, 16.

²⁴ Allocations and Service Rules for the 71-76 GHz, 81-86 GHz, and 92-95 GHz Bands, *Memorandum Opinion and Order*, 20 FCC Rcd 4889, 4902 (2005).

²⁵ See Stratos Comments at 2 (“Stratos respectfully submits that the Commission should reject the currently proposed ‘death penalty’ for failure to meet the contemplated new construction benchmarks in favor of the well-established keep-what-you-use approach, in order to foster rapid deployment of WCS networks and to allow the uninterrupted provision of broadband service to consumers.”); Horizon Comments at 5; Green Flag Comments at 6; WCS Coalition Comments at 18-19.

²⁶ Stratos Comments at 7.

The threat of losing one's entire license if strict performance metrics are not met actually works *against* the Commission's purposes because it scares off both debt and equity investment in the build-out of the facilities. Few firms in the investment community are willing to risk tens or hundreds of millions of dollars to build out a network, knowing that if some percentage of the population is not covered by a date in the near future, the entire investment will be forfeited. Instead of stimulating broadband build-out, the Commission will actually have stifled it. The Commission grudgingly came to this realization in the 700 MHz context, and the same principle applies here.²⁷

Indeed, the Commission itself has recognized the substantial public interest benefits to a “keep what you use” regulatory regime:

[O]ur ‘keep-what-you-use’ rules provide additional methods for making smaller license areas available, thus promoting access to spectrum and the provision of service, especially in rural areas. This rule ensures that others are given an opportunity to acquire spectrum that is not adequately built out and provide services to those who reside in those areas. In this way, our rules are pro-competitive and help ensure service to communities that might otherwise not receive service. In sum, we conclude that our approach should effectively promote service, including in rural areas, while establishing a clear regulatory framework for licensees as they develop their business plans.²⁸

There is nothing in the record to suggest that this logic is inapplicable to the WCS band, or that the death penalty proposed by the Commission otherwise advances the public interest. As such, the Commission should adopt for WCS the same approach taken with respect to 700 MHz – those who fail to meet an interim benchmark suffer a reduced license term and expedited final evaluation, and those that fail to meet the final benchmark lose the territory they are not adequately serving.²⁹

²⁷ Green Flag Comments at 6.

²⁸ *700 MHz Performance Order*, 22 FCC Rcd at 15349.

²⁹ To implement a “keep what you use” policy for point-to-point links, those WCS licensees that have deployed point-to-point networks, but fail to satisfy the final benchmark, would be precluded from adding additional links.

III. CONCLUSION.

The record developed in response to the *Performance Public Notice* confirms the concerns that the WCS Coalition expressed in its initial comments – the proposals advanced by the Commission threaten the very investment that performance requirements are designed to promote. Should the Commission elect to adopt WCS performance rules concurrent with technical and service rules, it should conform the WCS performance rules to the suggestions advanced herein and in the WCS Coalition’s initial filing.

Respectfully submitted,

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