

WILLIAM K. KEANE
DIRECT DIAL: 202.776.5243
E-MAIL: kkeane@duanemorris.com

www.duanemorris.com

NEW YORK
LONDON
SINGAPORE
LOS ANGELES
CHICAGO
HOUSTON
PHILADELPHIA
SAN DIEGO
SAN FRANCISCO
BALTIMORE
BOSTON
WASHINGTON, DC
LAS VEGAS
ATLANTA
MIAMI
PITTSBURGH
NEWARK
WILMINGTON
PRINCETON
LAKE TAHOE

June 22, 2010

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

**Re: WT Docket No. 07-293; ID Docket No. 95-91;
GEN Docket No. 90-357; RM-8610
Ex Parte Notice**

Dear Ms. Dortch:

This letter responds to ex parte statements recently filed by the WCS Coalition (the "Coalition") and Horizon Wi-Com, L.L.C. ("Horizon") (collectively, the "WCS Parties"). The WCS Parties filings seek, respectively, to have the Commission substantially revise the express text of new Rule 27.73 so as to either eliminate the Rule's requirement that protection of aeronautical mobile telemetry receive sites be consistent with the protection levels prescribed in ITU-R Recommendation M.1459 (in the case of Horizon); or clarify application of the Recommendation (Coalition) in a manner that amounts to significantly rewriting the Rule.

The Commission's procedural Rules are clear: Any effort to secure reconsideration or clarification of a Commission report and order is to be filed in accordance with Rule 1.429. That Rule prescribes that petitions be filed within 30 days of the date that the order in question is published in the Federal Register; that public notice, again published in the Federal Register, be given of the filing of such petitions (thus affording the requisite legal notice to interested parties); and that the time for filing comments or oppositions with respect to any such petitions begins from the date of such public notice. Because reconsideration petitions can lead to modified rules, these procedures were adopted to ensure conformity with the notice and comment requirements in FCC rulemakings contained within the Administrative Procedures Act.

The Report and Order has not yet been published in the Federal Register, so any petitions for reconsideration would be premature. In any event, the Commission has not placed the WCS Parties requests out for public comment. Thus, in AFTRCC's view, until the Report and Order is published in the Federal Register and the WCS Parties' requests subsequently are put out for public comment as petitions for reconsideration, it would be procedurally improper for the Commission to consider modification of the Rules adopted in the Report and Order in this proceeding (FCC 10-82) or to "clarify" them in the substantive manner requested by the Coalition.

At such time as the WCS Parties choose to file a proper petition for reconsideration and/or clarification, or the Commission chooses to treat their filings as such by publishing public notice of the filings in the Federal Register, interested parties can then be expected to respond. Until such time, it would be procedurally improper for action to be taken by the Commission based on the filings.

For the sake of completeness, AFTRCC would also add that the relief sought by the WCS Parties is not suitable for an erratum. Errata are, by definition, limited to the correction of clerical (e.g. typographical) errors.¹ The issue the WCS Parties raise does not involve mere editing; rather, the changes they seek go to the heart of the protections which the aerospace industry and government flight test agencies, are to be afforded under the Rules. Thus, absent concurrence from affected parties provided by AFTRCC or its Member Companies, an erratum would be inappropriate.

A copy of this ex parte filing is submitted for the docket.

Sincerely,


William K. Keane

¹ See, e.g., Garner, B., A Dictionary of Modern Legal Usage (1990) (an erratum denotes the correction of “errors made in printing discovered only after the work has gone to press”).