

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 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)	
)	
Establishment of Rules and Policies for the)	IB Docket No. 95-91
Digital Audio Radio Satellite Service in the)	GEN Docket No. 90-357
2310-2360 MHz Frequency Band)	RM-8610

**OPPOSITION OF THE WCS COALITION TO
PETITION FOR RECONSIDERATION OF GREEN FLAG WIRELESS, LLC,
CWC LICENSE HOLDING, INC. AND JAMES MCCOTTER**

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October 18, 2010

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EXECUTIVE SUMMARY

The WCS Coalition agrees with Green Flag Wireless, LLC, CWC License Holding, Inc., and James McCotter (collectively, “the Green Flag Group”) that the Commission should revisit certain aspects of the *WCS Order*. Specifically, the new performance benchmarks adopted in the *WCS Order* will impede broadband deployment by WCS licensees because real and practical obstacles will make it difficult for licensees to timely construct their networks to satisfy the new coverage requirements. In addition, the current “death penalty” in which WCS licensees forfeit their entire license if they do not satisfy applicable performance benchmarks will deter investment in the 2.3 GHz WCS band and disserves the public interest. Accordingly, the Commission should adopt the WCS Coalition’s proposal to modify the WCS performance deadlines and replace the existing death penalty with a “keep what you use” policy.

The WCS Coalition opposes the Green Flag Group’s assertion that incumbent WCS licensees should be subject to more stringent performance requirements than those parties that submitted competing applications during the 2007 WCS license renewal cycle. The Green Flag Group erroneously concludes that incumbent licensees have an advantage over new licensees because they allegedly have had more time to develop and implement business plans. But the ability of incumbents to make any plans regarding their WCS spectrum had been severely constrained until both the *WCS Order* establishing the technical rules that govern 2.3 GHz band operations (including rules to mitigate interference with SDARS and AMT operations) and the companion *Second Report and Order* in IB Docket No. 95-91 governing the operation of SDARS terrestrial repeaters were released in May. Thus, existing licensees and competing applicants appropriately have the same period to create new business plans, acquire sites equipment, construct their networks, and satisfy the new performance requirements.

Furthermore, the Commission should reject the Green Flag Group’s assertion that the Wireless Telecommunications Bureau (“Bureau”) exceeded its authority when its June 29, 2010 *Public Notice* suspended the then-current substantial service requirement of Section 27.14 and confirmed that substantial service showings would not be accepted. The Commission clearly intended that the new performance benchmarks adopted in the *WCS Order* supersede the substantial service requirement for all WCS licensees. Indeed, the Green Flag Group simply attempts to manufacture confusion out of the fact that Federal Register publication of the new rules was unexpectedly delayed by the issuance of two *errata* to the *WCS Order* and thus did not become effective until September 1, 2010. Realizing that the new rules would not become effective prior to the July 21, 2010 substantial service deadline, the Bureau suspended the prior substantial service rule to promote the orderly transition from the old to the new requirements. The Bureau acted well within its authority pursuant to Section 0.131 of the Commission’s Rules, which permits the Bureau to act on matters associated with the licensing and regulation of wireless telecommunications.

Moreover, the Green Flag Group’s challenge of the Bureau’s suspension decision is procedurally defective. Any petition for reconsideration of that action was due July 29, 2010, yet the Green Flag Group did not file until September 1. Accordingly, the suspension is a final action of the Commission and may not be disturbed now absent extraordinary circumstances, which the Green Flag Group cannot show.

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The WCS Coalition, by its attorneys and pursuant to Section 1.429(f) of the Commission’s Rules, opposes in part the petition of Green Flag Wireless, LLC, CWC License Holding, Inc., and James McCotter (collectively, “the Green Flag Group”)¹ for reconsideration of the portion of the Commission’s May 20, 2010 *Report and Order* in WT Docket No. 07-293 that modified Section 27.14 of the Commission’s Rules by replacing the former substantial service showing requirement for 2.3 GHz band Wireless Communications Service (“WCS”) licensees with new quantitative performance benchmarks.² The WCS Coalition agrees with the Green Flag Group that the Commission should revisit certain aspects of the *WCS Order* by modifying the new performance deadlines to comport with the record and by eliminating the

¹ Petition of Green Flag Wireless, LLC, *et al.* for Reconsideration, WT Docket No. 07-293, *et al.* (filed Sept. 1, 2010) (“Green Flag Group Petition”). The WCS Coalition is also submitting today oppositions to the petitions for reconsideration filed in these proceedings by Sirius XM Radio Inc. (“Sirius XM”) and by ARRL that raise issues unrelated to the issues raised by the Green Flag Group Petition.

² Amendment of Part 27 of the Commission’s Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, *Report and Order and Second Report and Order*, FCC 10-82 (rel. May 20, 2010); *Erratum* (rel. June 8, 2010); *Second Erratum* (rel. July 14, 2010) (collectively “*WCS Order*”).

“death penalty” imposed on those licensees that fail to fully meet the performance benchmarks. There is no merit, however, to the Green Flag Group’s assertion that incumbent WCS licensees should be subject to more stringent performance requirements than those parties that submitted competing applications during the 2007 WCS license renewal cycle. Furthermore, the Commission should reject the Green Flag Group’s assertion that the Wireless Telecommunications Bureau (“Bureau”) exceeded its authority when its June 29, 2010 *Public Notice* suspended the then-current substantial service requirement of Section 27.14 and confirmed that substantial service showings would not be accepted. The Commission clearly intended that the new performance benchmarks adopted in the *WCS Order* supersede the substantial service requirement and the Bureau acted well within its authority to ensure the orderly transition to the new rules.

I. THE WCS COALITION AGREES WITH THE GREEN FLAG GROUP THAT CERTAIN ASPECTS OF THE NEW PERFORMANCE REQUIREMENTS WILL IMPEDE BROADBAND DEPLOYMENT BY WCS LICENSEES

At the outset, the Commission should note that the Green Flag Group Petition is, in many ways, fully consistent with the arguments the WCS Coalition and AT&T Inc. (“AT&T”) have advanced in their petitions for reconsideration of the *WCS Order*.³ As such, the WCS Coalition agrees with the Green Flag Group that the new performance benchmarks adopted in the *WCS Order* “will prove [to be] counter-productive to broadband build out,”⁴ and thus has urged the Commission to revisit its new WCS performance requirements.⁵

³ See Petition of the WCS Coalition Petition for Partial Reconsideration, WT Docket No. 07-293, *et al.* (filed Sept. 1, 2010) (“WCS Coalition Petition”); Petition of AT&T Inc. for Partial Reconsideration, WT Docket No. 07-293, *et al.* (filed Sept. 1, 2010) (“AT&T Petition”).

⁴ Green Flag Group Petition at 1.

⁵ See WCS Coalition Petition at 1-6.

The Green Flag Group correctly observes that real and practical obstacles will make it difficult for licensees to timely construct their networks to satisfy the new coverage requirements.⁶ The WCS Coalition concurs with the Green Flag Group that “[t]he Commission has presented no model and no business case” that supports the rapid build-out requirements reflected in the modified Section 27.14⁷ and that “[s]ix years may seem like a long time to build out a nation-wide broadband system, but it is not.”⁸ Indeed, as AT&T succinctly put it, “[t]he WCS performance requirements adopted in the [*WCS Order*] depart from the previous rules without any support in the record for the Commission’s conclusion that they are attainable.”⁹ Accordingly, the Green Flag Group Petition, along with that filed by AT&T,¹⁰ provides further support for the WCS Coalition’s proposal for the adoption of modified WCS performance deadlines on reconsideration.¹¹

The Green Flag Group also concurs with the WCS Coalition and AT&T that the Commission should adopt a “keep what you use” policy for WCS licensees that do not satisfy applicable performance benchmarks.¹² The Green Flag Group Petition supplements the existing record with further evidence of how retention of the death penalty will deter investment in the

⁶ See Green Flag Group Petition at 2-3.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ See AT&T Petition at 3.

¹⁰ The AT&T Petition provides extensive analysis of the timeline necessary for deployment of 4G technologies in the 2.3 GHz WCS band, and demonstrates that the extensive deployment called for by the new performance benchmarks cannot reasonably be achieved within the timelines established in the *WCS Order*. See *id.* at 6-11.

¹¹ See WCS Coalition Petition at 1-4.

¹² See Green Flag Group Petition at 5-7; WCS Coalition Petition at 4-6; AT&T Petition at 11-13.

2.3 GHz WCS band,¹³ and its arguments are fully consistent with those presented by the WCS Coalition and AT&T in their own petitions for reconsideration of the *WCS Order*.¹⁴

II. ALL WCS LICENSEES SHOULD BE SUBJECT TO THE SAME PERFORMANCE DEADLINES

Contrary to the assertions of the Green Flag Group, no basis exists for applying different performance deadlines to incumbent licensees and the pending competing applicants for WCS licenses.¹⁵ The Green Flag Group's argument is rooted in its erroneous conclusion that "new licensees will be starting from scratch while the incumbents have had well over a decade already to plan, acquire equipment and arrange infrastructure."¹⁶ What the Green Flag Group conveniently ignores, however, is that until both the *WCS Order* establishing the technical rules that will govern 2.3 GHz band operations (including rules to mitigate interference into the satellite Digital Audio Radio Service ("SDARS") and Aeronautical Mobile Telemetry ("AMT")) and the companion *Second Report and Order* in IB Docket No. 95-91 (the "*SDARS Order*") governing the operation of SDARS terrestrial repeaters were released on May 20, 2010, 2.3 GHz band WCS licensees, spectrum lessors, the vendor community and standard-setting bodies faced such substantial regulatory uncertainty that any ability "to plan, acquire equipment and arrange infrastructure" has been severely constrained. Among many other things:

- Until the Commission resolved the issues raised in its 1997 *Notice of Proposed Rulemaking* in IB Docket No. 95-91 and adopted power limits governing SDARS terrestrial repeaters, WCS licensees could not seriously begin to develop network designs (which is a precondition to site acquisition work) because any network design will have to accommodate the power levels at which Sirius XM can operate its terrestrial repeaters.

¹³ See Green Flag Group Petition at 5-6.

¹⁴ See WCS Coalition Petition at 4-6; AT&T Petition at 11-13.

¹⁵ See Green Flag Group Petition at 4-5.

¹⁶ *Id.* at 4.

- Although the Commission proposed in the *Notice of Proposed Rulemaking* in WT Docket No. 07-293 (the “*NPRM*”) to permit WCS fixed and base stations to operate at 2000 watts average equivalent isotropic radiated power (“EIRP”), that proposal proved controversial, spawning a variety of proposals to more strictly limit EIRP or subject WCS to ground level signal strength limitations that effectively would have precluded mobile and portable operations. Until release of the *WCS Order*, there has been uncertainty as to the power level at which WCS base stations would be permitted to operate.¹⁷ That power level, of course, dictates the maximum area a given WCS base station could reasonably cover, and thus drives the minimum density at which base stations must be deployed.
- Similarly, until release of the *WCS Order* there has been substantial debate over the maximum permissible power level for WCS consumer devices. As a result, the development of network design has been precluded because the maximum permissible power level for consumer devices directly impacts base station deployment density.¹⁸
- Although the Commission proposed in the *NPRM* to modify the spectral mask imposed on WCS mobile devices (which had effectively prevented the deployment of mobile services in the band), it was not until release of the *WCS Order* that vendors have had sufficient specificity regarding the spectral mask that mobile and portable equipment design could begin in earnest.¹⁹

¹⁷ Indeed, that uncertainty continues because Sirius XM has petitioned the Commission on reconsideration to adopt a ground level emissions limit on WCS base stations. *See* Petition of Sirius XM Radio Inc. for Partial Reconsideration and Clarification, WT Docket No. 07-293, at 15-18 (filed Sept. 1, 2010) (“Sirius XM Petition for Reconsideration”). As the WCS Coalition discusses in detail in its opposition to the Sirius XM Petition for Reconsideration, the record before the Commission supports its rejection of Sirius XM’s prior proposals for ground level emissions limits, and Sirius XM submits nothing on reconsideration that would justify a reversal of course. However, until the Commission rejects the latest Sirius XM effort to burden WCS with onerous ground level emission limits, WCS will be subject to continuing regulatory uncertainty.

¹⁸ Again, although the *WCS Order* decided these issues, Sirius XM has urged the Commission on reconsideration to adopt a variety of new rules governing the maximum power level of WCS consumer devices that results in continued regulatory uncertainty for WCS licensees, lessees and equipment vendors. *See id.* at 4-9. The WCS Coalition responds to these Sirius XM efforts to re-open issues on which a substantial record had been built in its opposition to the Sirius XM Petition for Reconsideration. But, again, until final rules are in place, the WCS community will continue to be subject to regulatory uncertainty.

¹⁹ And, once again, the temporary regulatory certainty that the WCS community enjoyed upon adoption of the *WCS Order* was interrupted when Sirius XM petitioned the Commission to adopt a substantially more stringent $70 + 10 \log(P)$ out-of-band attenuation factor for WCS mobile and portable devices. *See id.* at 10-13. As the WCS Coalition establishes in its opposition to the Sirius XM Petition for Reconsideration, the record before the Commission supports the spectral mask adopted in the *WCS Order*, and Sirius XM does not add anything on reconsideration that would justify adoption of the mask it now advances. However, until the Commission rejects the latest Sirius XM effort to frustrate mobile and portable use of the 2.3 GHz band, WCS will be subject to continuing regulatory uncertainty.

- During the course of this proceeding, Sirius XM began pressing the Commission to impose duty cycle limitations on WCS consumer devices but, until the release of the *WCS Order*, the specific duty cycles were unknown and thus fundamental decisions regarding WCS business plans and network deployment could not be made.²⁰
- As discussed in detail in the AT&T Petition, through no fault of the WCS community in the United States, the 3rd Generation Partnership Project (“3GPP”), which is the standard setting body for LTE, will not be to incorporate the 2.3 GHz band into the LTE standard until mid-2012.²¹

None of this is news to the Commission, which has repeatedly acknowledged that the outstanding technical and regulatory issues that have plagued the WCS band have impeded widespread deployment. For example, in 2006, the Bureau extended the build out deadline for the majority of WCS licensees by three years.²² The extension was necessary because “the uncertainty regarding the rules governing the operation of adjacent-band SDARS terrestrial repeaters had hindered WCS equipment development, network design, and facility deployment” and extending the deadline would provide licensees time to explore the deployment of new WiMAX technology on the 2.3 GHz WCS band.²³ Most recently in the *WCS Order*, the Commission recognized that equipment and devices for wireless broadband service on the 2.3

²⁰ The duty cycles that were adopted for WCS operations have proven extremely controversial. AT&T has established that the duty cycle limits imposed on WCS are problematic, and thus AT&T and the WCS Coalition have petitioned the Commission to adopt a 43.33% maximum duty cycle for time division duplex Long Term Evolution (“LTE”) technologies and to eliminate the penalty imposed on licensees that deploy a frequency division duplex technology. *See* AT&T Petition at 16-20; WCS Coalition Petition at 7. On the other hand, Sirius XM has urged the Commission on reconsideration to adopt far more onerous restrictions on WCS consumer devices. *See* Sirius XM Petition for Reconsideration at 12-14. Thus, once again, the regulatory uncertainty that has frustrated WCS deployment continues.

²¹ *See* AT&T Petition at 8-9.

²² *See* Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses, *Order*, 21 FCC Rcd 14134 (WTB 2006) (“*WCS Extension Order*”). *See also id.*, 21 FCC Rcd at 14139 (noting that the out-of-band limits previously adopted to protect SDARS from mobile interference “have impeded the development of WCS equipment and have contributed to the unique circumstances of the band.”) (citation omitted).

²³ *WCS Order* at ¶ 15. As AT&T explains, neither WiMAX nor LTE systems will be able to be effectively deployed within the new performance timelines. *See* AT&T Petition at 2-13.

GHz WCS band still are not immediately available and that licensees would therefore need additional time to build out their systems and deploy services.²⁴

The simple fact is that it has been more than a decade of regulatory uncertainty, not misfeasance or malfeasance by incumbent licensees, that has stood in the path of building out the 2.3 GHz WCS band. As such, existing WCS licensees are on the same footing as the competing applicants – the May 2010 release of the *WCS Order* and companion *SDARS Order* have effectively started the clock anew for all by revolutionizing the regulatory environment in which 2.3 GHz WCS operates.²⁵ Accordingly, incumbent licensees appropriately have the same time period as the Green Flag Group to create new business plans, acquire sites and infrastructure equipment, construct their networks, and satisfy the performance requirements adopted in the *WCS Order*.²⁶

III. THE REPLACEMENT OF THE OLD SUBSTANTIAL SERVICE REQUIREMENT IS CLEAR AND PROCEDURALLY SUFFICIENT

While the Green Flag Group attempts to create a “muddle” where none exists,²⁷ it is clear that the Commission intended in the *WCS Order* that the new performance benchmarks would replace the old substantial service standard, that all WCS licensees would be subject to the new

²⁴ See *WCS Order* at ¶¶ 199-200 (noting that existing WiMAX equipment and devices must first be adapted before they can be used on the 2.3 GHz band).

²⁵ The Green Flag Group also inextricably claims that new WCS licensees should be given more time to satisfy the new build out requirements than incumbent licensees because new licensees have a reasonable expectation under the prior Part 27 rules of a ten year period to meet those obligations. Filing an application for a license, however, vests no rights in the applicant regarding certain license terms and conditions. See *Chadmoore Communications, Inc. v. FCC*, 113 F.3d 235, 240-41 (D.C. Cir. 1997) (holding that the Commission may modify its rules regarding build out periods for mere applicants because they have no vested rights protected by the restrictions on retroactive rules).

²⁶ The Green Flag Group notes that no incumbent licensee requested as much as a 42-month extension of the July 21, 2010 build out deadline. See Green Flag Group Petition at 7. The extension requests to which the Green Flag Group refers, however, were based upon the then current substantial service standard, not the new more onerous performance requirements adopted in the *WCS Order*.

²⁷ *Id.*

benchmarks, and that they would not be required to meet the then-upcoming July 21, 2010 substantial service deadline.²⁸ Indeed, the *WCS Order* explicitly states that “[t]he new performance requirements *supersede* the substantial service performance requirement for all WCS licensees, including any licensee that previously filed a substantial service demonstration” and that “all pending requests for an extension of time to demonstrate substantial service” and related challenges to previously filed substantial service performance showings are dismissed “as moot.”²⁹

The Green Flag Group’s assertion that the Commission failed to explain why it is providing incumbent licensees “an additional 42 months to achieve substantial service benchmarks” shows a fundamental misunderstanding of the *WCS Order*.³⁰ The *WCS Order* does not, as the Green Flag Group contends, extend the time period for incumbents to meet the prior substantial service standard. Rather, as explained above, the Commission establishes a completely new set of performance benchmarks – ones far more stringent than the former substantial service safe harbors had required of WCS licensees.³¹ In deciding that the new performance benchmarks would supersede the substantial service test, the Commission acknowledged the protracted technical and regulatory matters that have prevented WCS licensees from constructing broadband systems, and concluded that:

[t]oday, we are reducing the technological uncertainties that existed in 1997 by revising technical restrictions to enable WCS licensees to provide new high-value

²⁸ *WCS Order* at ¶¶ 218-21.

²⁹ *Id.* at ¶ 218, 221 (emphasis added) (citations omitted).

³⁰ Green Flag Group Petition at 8.

³¹ The Green Flag Group ironically argues on the one hand that no performance requirements are necessary because the auction mechanism ensures that spectrum is put in the hands of the operator that will put it to the best and most productive use, but on the other hand seeks to avoid the auction process altogether by obtaining WCS licenses through comparative hearings. *Id.* at 3-4.

broadband and other innovative services in the band. Accordingly, enhanced performance requirements are appropriate.³²

The Green Flag Group attempts to manufacture confusion out of the fact that the rules adopted in the *WCS Order* did not become effective until September 1, 2010. Indeed, the *WCS Order* was adopted and released on May 20, 2010, well before the then existing July 21, 2010 substantial service showing deadline. The Commission no doubt reasonably expected when it adopted the *WCS Order* that a summary of the decision and the new rules would be published in the Federal Register in ample time for the Section 27.14 amendments eliminating the substantial service requirement to become effective before the July 21, 2010 substantial service deadline. However, the Commission subsequently issued two substantive *errata* – the first on June 8, 2010 and the second on July 14, 2010 – that delayed Federal Register publication beyond July 21, 2010.³³ As a result, the new rules did not become effective until September 1, 2010.

Realizing by late June 2010 that the modifications to Section 27.14 would not become effective prior to the July 21, 2010 substantial service deadline, as the Commission had clearly intended, the Bureau suspended the prior substantial service rule to promote the orderly transition from the old to the new requirements.³⁴ The Bureau was well within its authority to do so pursuant to Section 0.131 of the Commission’s Rules, which permits the Bureau to act on matters associated with the licensing and regulation of wireless telecommunications. Specifically, Section 0.131 delegates broad authority to the Bureau to “administer[] the programs and policies for the regulation of the terms and conditions under which communications entities offer domestic wireless telecommunications services and of ancillary operations related to the

³² *WCS Order* at ¶ 196 (citation omitted).

³³ *See supra* note 2.

³⁴ *See* Wireless Telecommunications Bureau Advises 2.3 GHz Wireless Communications Service Licensees That It Will Not Accept Substantial Service Performance Showings, *Public Notice*, 25 FCC Rcd 8230 (2010).

provision of such services (satellite communications excluded). These functions include all wireless telecommunications service providers' and licensees' activities."³⁵ Moreover, the rule directs the Bureau to "[r]egulate[] the charges, practices, classifications, terms and conditions for, and facilities used to provide, wireless telecommunications services."³⁶

It is well established that the authority granted to the Bureau under Section 0.131 includes the application of performance requirements. For example, in 1999 the U.S. Court of Appeals for the District of Columbia had remanded new construction requirements that the Commission had previously applied to certain incumbent 800 MHz Specialized Mobile Radio licensees.³⁷ Pursuant in part to Section 0.131, the Bureau on its own motion temporarily suspended the construction deadlines for the affected licensees until the Commission addressed the matter in accordance with the court's remand and established new build out deadlines.³⁸ In addition, the Bureau routinely acts on requests for waivers and/or extensions of performance requirements.³⁹ Indeed, the Bureau adopted the very July 21, 2010 WCS substantial service

³⁵ 47 C.F.R § 0.131.

³⁶ *Id.* § 0.131(d).

³⁷ *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965 (D.C. Cir. 1999).

³⁸ See Wireless Telecommunications Bureau Temporarily Suspends Construction Timetable For Wide Area 800 MHz SMR Licensees Due To Court Remand, *Public Notice*, 14 FCC Rcd 6348 (1999). The Commission subsequently adopted new performance requirements and terminated the suspension that the Bureau had put into effect. See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Remand*, 14 FCC Rcd 21679 (1999).

³⁹ See, e.g., Request of Licensees in the 218-219 MHz Service for Waiver of the Five-Year Construction Deadline, *Order*, 14 FCC Rcd 5190, 5194 (WTB 1999) (extending, by the Bureau's own motion, the construction deadline for all 218-219 MHz service licensees until the Commission resolved a pending rulemaking proceeding to apply uniform construction requirements to all 218-219 MHz service licensees); Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service, *Order*, DA 10-1378 (rel. July 28, 2010) (granting the requests of various multichannel video and data distribution service licensees for a waiver and extension of the five-year substantial service build out deadlines); Multilateration Location and Monitoring Service Construction Requirements, *Order on Reconsideration and*

deadline that the Green Flag Group claim it has no authority to suspend.⁴⁰ Rather clearly, the Bureau's suspension of the July 21 deadline in this case is well within its authority under Section 0.131 and fully consistent with the intent of the *WCS Order*.

Finally, the Green Flag Group raises this argument too late. The Public Notice suspending the old substantial service showing requirements was released on June 29, 2010. Any petition for reconsideration of that action was due 30 days later, on July 29, 2010,⁴¹ yet the Green Flag Group did not file until September 1. Accordingly, the suspension is a final action of the Commission and may not be disturbed now absent extraordinary circumstances, which the Green Flag Group cannot show.

Memorandum Opinion and Order, 22 FCC Rcd 1925 (WTB 2007) (granting on its own motion an extension of the build out deadlines for certain Location and Monitoring Service licenses).

⁴⁰ See *WCS Extension Order*, 21 FCC Rcd at 14139-41.

⁴¹ See 47 U.S.C. § 405(a); 47 C.F.R. § 1.106(f).

IV. CONCLUSION

The record demonstrates that the Commission should revisit certain aspects of the *WCS Order* to facilitate the provision of viable wireless broadband services on the 2.3 GHz WCS band. The Commission, however, should reject the Green Flag Group's contention that new WCS licensees should be subject to performance deadlines that differ from those imposed upon incumbent licensees. Furthermore, there is no basis for the Green Flag Group's claim that the Bureau exceeded its authority when it suspended the former substantial service requirements for WCS licensees until the new performance benchmarks became effective.

Respectfully submitted,

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October 18, 2010

CERTIFICATE OF SERVICE

I, Jennifer L. Canose, hereby certify that the foregoing Opposition of the WCS Coalition was served this 18th day of October, 2010, by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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/s/ Jennifer Canose

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