

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Part 101 of the Commission's	)	WT Docket No. 10-153
Rules to Facilitate the Use of Microwave for	)	
Wireless Backhaul and Other Uses and to Provide	)	
Additional Flexibility to Broadcast Auxiliary	)	
Services and Operational Fixed Microwave Licensees	)	
	)	
Request for Interpretation of Section 101.141(a)(3)	)	WT Docket No. 09-106
of the Commission's Rules Filed by Alcatel-Lucent,	)	
Inc., <i>et al.</i>	)	
	)	
Petition for Declaratory Ruling Filed by Wireless	)	WT Docket No. 07-121
Strategies, Inc.	)	
	)	
Request for Temporary Waiver of Section	)	
101.141(a)(3) of the Commission's Rules Filed by	)	
Fixed Wireless Communications Coalition	)	

To: The Commission

**COMMENTS**

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its clients that are existing and prospective licensees of point-to-point microwave radio stations, under Part 101 of the Commission's Rules, as shown in Attachment A hereto ("the BloostonLaw Licensees"), hereby submits these comments in opposition to that portion of the Commission's rulemaking proposal in this proceeding that seeks to modify Part 101 to allow the licensing of "auxiliary stations."

**INTRODUCTION**

The companies listed in Attachment A are rural local exchange carriers, their subsidiaries and other small business interests in rural America. As indicated, they are all either licensees or prospective licensees in the Common Carrier Fixed Point-to-Point

Microwave Service under Subpart I of Part 101 of the Commission's Rules. These companies utilize microwave radio in connection with providing local exchange and toll telephone services, wireless broadband and commercial mobile radio services, fixed-service links and other wireless backhaul applications. They rely heavily on the continued availability of point-to-point microwave radio spectrum on an interference-free basis in addition to their concerns about the protection of their presently licensed microwave networks from destructive interference. While the BloostonLaw Licensees recognize the desirability for the Commission to review Part 101 to determine whether changes in the regulations can be made that will ensure sufficient microwave capacity for current and future demands for wireless backhaul, changes should not be made that will work to the disadvantage of existing licensees who will continue to rely on the availability of clean spectrum for fixed-station point-to-point requirements. There is clearly a balancing of interests involved here and the BloostonLaw Licensees are not convinced that the balance tips in favor of allowing "auxiliary stations" under the proposed Section 101.58 of the Commission's Rules. Accordingly, the BloostonLaw Licensees hereby submit their comments in opposition to adoption of the proposed rules that would permit the licensing of auxiliary stations under Part 101.

### **DISCUSSION**

This proceeding had its genesis in a filing by Wireless Strategies, Inc. (WSI) in February of 2007 that was made public in June of 2007.<sup>1</sup> WSI had petitioned the Commission for a declaratory ruling that its proposed operations were consistent with the Commission's Rules in Part 101 as then written. WSI's proposal was to use lower gain

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<sup>1</sup> Wireless Telecommunications Bureau seeks Comment on Request for Declaratory Ruling by Wireless Strategies, Inc. regarding Coordination of Microwave Links under Part 101 of the Commission's Rules, *Public Notice*, 22 FCC Rcd 11133 (rel. June 19, 2007).

antennas than are typically used in point-to-point operations that had sufficient side-lobe radiation to allow the main fixed station to communicate effectively with multiple fixed stations (now termed “auxiliary stations” by the FCC) situated all along the side lobes of the antenna – basically a point-to-multipoint operation. In effect, the licensee would be reusing its coordinated frequencies over a much larger area than in the typical point-to-point operation, thereby creating a quasi-geographic-area license.

WSI’s petition was roundly opposed by a major microwave frequency coordinator, several equipment manufacturers, an association of broadcast engineers, a major cellular carrier and others.<sup>2</sup> All claimed, among other things, that WSI’s proposed operations could not be accommodated under the current Part 101 rules and, in any event, such operations were contrary to the public interest because they intruded upon the manner in which microwave operations have been traditionally coordinated and licensed under Part 101. Moreover, the general tenor of the oppositions was that operation as proposed by WSI had the potential for causing interference to existing microwave station operations and would severely limit the availability of microwave spectrum in the future.

The Commission’s *Notice of Proposed Rulemaking and Notice of Inquiry* (*NPRM*), FCC 10-146 (rel. Aug. 5, 2010) in these proceedings denied the petition for a declaratory ruling, finding that WSI’s proposal is inconsistent with the plain wording of the Commission’s rules.<sup>3</sup> Nevertheless, the Commission found that the concept was worthy of further consideration and instituted this proceeding to consider changes to Part

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<sup>2</sup> See, e.g., comments or reply comments filed in WT Docket No. 07-121 by Comsearch, Inc. (filed July 19, 2007), Harris Stratex Networks, Inc. (filed July 19, 2007), Alcatel-Lucent (filed July 19, 2007), Society of Broadcast Engineers, Inc. (filed July 19, 2007), United States Cellular Corporation (filed Aug. 20, 2007), *et al.*

<sup>3</sup> *NPRM*, at 49.

101 to allow operation as contemplated by WSI.<sup>4</sup> While reserving judgment on the ultimate outcome, the Commission suggested certain changes to the Part 101 rules for the purpose of allaying the concerns that had been expressed by those opposing WSI's petition.<sup>5</sup>

The BloostonLaw Licensees recognize that there may be a shortage of spectrum for point-to-multipoint operations and that, in general, it is desirable to review the Commission's rules periodically to determine whether changes can be made to accommodate innovative uses of radio without working to the disadvantage of licensees utilizing the radio spectrum for more traditional uses. Likewise, we do not oppose the Commission's rulemaking proposal solely with the idea that things that have worked well in the past should not be given a new look. Rather, the BloostonLaw Licensees remain unconvinced that WSI's novel approach to licensing in Part 101, notwithstanding the safeguards proposed by the Commission, fit well within the parameters of Part 101 and would not result in harm to existing licensees or deplete the availability of clean spectrum in the future.

The BloostonLaw Licensees respect the views of Comsearch, a leading microwave frequency coordinator and designer of microwave systems, and other microwave system designers and equipment manufacturers, who have done exhaustive engineering studies and have concluded that the proliferation of WSI's mode of operation of point-to-multipoint systems cannot be accommodated under Part 101 without substantially increasing the potential for interference to existing point-to-point networks and exacerbating the shortage of spectrum in the future. Moreover, the public interest

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<sup>4</sup> *Id.*, at 50.

<sup>5</sup> *Id.*, at 52.

arguments put forth by WSI as justifying its mode of operation do not appear to be meritorious. Thus, WSI claims that when the Commission licenses point-to-point links, there are large areas in the vicinity that cannot be licensed to others because of interference concerns. WSI reasons that allowing auxiliary stations makes more efficient use of the frequency spectrum by allowing multiple stations to co-exist in the vicinity. However, Comsearch has shown that this concept is not borne out by the facts. For example, Comsearch is on record as having established that in areas with high frequency density, such as Los Angeles, thousands of licensed point-to-point links are able to co-exist in close proximity to each other on an interference-free basis under the current rules in Part 101.<sup>6</sup> This is possible because the Commission's current licensing scheme requires the use of minimum power and high-gain antennas with narrow beamwidths, thereby limiting side-lobe radiation.<sup>7</sup> This allows for maximum utilization of the microwave frequency spectrum.

Under the licensing scheme now proposed by the Commission, would-be applicants such as WSI and its customers would have an incentive to apply for the maximum power permitted under the Commission's rules and, with the proposed relaxation of the antenna performance standards, modulation and minimum path length requirements, the interference potential of stations thereby licensed may be expected to increase substantially.<sup>8</sup> Although the Commission is proposing that auxiliary stations may not cause any increase in interference to other licensed services, this does not address how the proliferation of these auxiliary stations would deplete the availability of

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<sup>6</sup> See, generally, [http://www.comsearch.com/files/TP-104514-EN\\_FCC\\_Alert.pdf](http://www.comsearch.com/files/TP-104514-EN_FCC_Alert.pdf)

<sup>7</sup> 47 CFR Sections 101.113, 101.115.

<sup>8</sup> See, proposed Rule Section 101.58(d).

microwave spectrum for conventional point-to-point operations.<sup>9</sup> The proposed rules therefore appear to promote inefficient utilization of the microwave frequency spectrum. Instead of stations with narrow RF propagation and clearly defined minimum interference potential, the microwave environment may be expected to degenerate into a sort of wide-area conglomeration of stations with inefficient antenna performance characteristics and poorly-defined interference parameters – tantamount to multiple quasi-geographic-area licenses. Clearly, this is contrary to the public interest.

### CONCLUSION

The Commission's motivation in proposing rules to allow for the licensing of auxiliary stations is unquestionably well intentioned. There is, no doubt, the need for additional point-to-multipoint licensing in implementing the National Broadband Plan. However, the balancing of interests that the Commission must perform in determining whether to allow the licensing of auxiliary stations in the manner now proposed tips, we believe, in favor of finding other spectrum and establishing a separate part of the Commission's rules for such licensing. The provisions for licensing of point-to-point microwave operations under Part 101 of the Commission's Rules have proved to be too valuable for a wide variety of licensees and prospective licensees over a long period of time to be tampered with now. Too many interests, including landline and wireless carriers, public safety, critical infrastructure, broadcasters, municipalities and others would be disadvantaged by adoption of the proposed rules. Accordingly, the BloostonLaw Licensees urge the Commission to not adopt the rules for licensing of auxiliary stations under Part 101 as proposed in this proceeding.

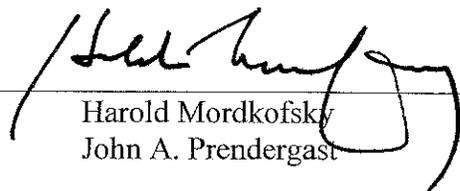
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<sup>9</sup> See, proposed Rule Section 101.58(c).

Respectfully submitted,

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By:

  
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Dated: October 25, 2010

## **Attachment A**

The following are the BloostonLaw Licensees on whose behalf the foregoing Comments are filed:

**Cal-Ore Telephone Company  
Dorris, California**

**Churchill County Telephone  
d/b/a CC Communications  
Fallon, Nevada**

**Dubois Telephone Exchange, Inc.  
Dubois, Wyoming**

**Ducor Telephone Company  
Bakersfield, California**

**The Lincoln County Telephone System, Inc.  
Pioche, Nevada**

**Mobile Phone of Texas, Inc.  
Wichita Falls, Texas**

**Nucla-Naturita Telephone Company  
Nucla, Colorado**

**Pinnacles Telephone Company  
Paicines, California**

**The Ponderosa Telephone Company  
O'Neals, California**

**Public Service Telephone Company  
Reynolds, Georgia**

**Sacred Wind Communications, Inc.  
Albuquerque, New Mexico**

**South Central Utah Telephone Association, Inc.  
Escalante, Utah**

**Telcom Systems, Ltd  
Homestead, Florida**