

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

In the Matter of)	
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)	
Amendment of Parts 1, 22, 24, 27, 74, 80,)	WT Docket No. 10-112
90, 95, and 101 To Establish Uniform)	
License Renewal, Discontinuance of)	
Operation, and Geographic Partitioning and)	
Spectrum Disaggregation Rules and)	
Policies for Certain Wireless Radio Services)	
)	
Imposition of a Freeze on the Filing of)	
Competing Renewal Applications for)	
Certain Wireless Radio Services and the)	
Processing of Already-Filed Competing)	
Renewal Applications)	
)	

EX PARTE COMMENTS

May 9, 2011

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The Wireless Communications Association International, Inc. (“WCAI”), the trade association of the wireless broadband industry, submits these ex parte comments in this proceeding.

I. SUMMARY

Although WCAI generally supports the goals of streamlining and harmonizing the renewal of licenses, WCAI urges the Commission to consider the unique characteristics of the carrier’s carrier backhaul model in the area-licensed millimeter wave bands. The Commission’s current approach based on the number of links per one million population assumes a “build it and they will come” model that is inapplicable to the carrier’s carrier backhaul model in the area-licensed millimeter wave bands. Carrier’s carriers build links in response to specific users’ demands, not to satisfy an arbitrary safe harbor that does not reflect actual demand. The safe harbor for the carrier’s carrier backhaul model in these bands should be based on unique criteria focused on the offering of a viable, competitive backhaul option available to commercial service providers and government users rather than a particular number of fixed links per population. Adopting this approach would promote spectral efficiency, licensee and investor certainty, and the public interest.

II. DISCUSSION

A. The Commission Should Adopt a More Flexible Approach to Safe Harbors for Area-Licensed Millimeter Wave Bands.

As noted in its initial comments in this proceeding, WCAI does not support “uniform”¹ renewal requirements for all wireless services in all spectrum bands.² The

¹ Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum

differences between spectrum bands are simply too great for a uniform approach to promote the public interest and the Commission’s policy goals. Nowhere is this more evident than in the area-licensed millimeter wave bands.³

For example, in the 1997, LMDS order, the Commission said “[o]ur renewal expectancy for LMDS is based on renewal expectancy rules we have adopted for cellular service.”⁴ At that time, the Commission believed a “broad range of new and innovative services” would be offered using LMDS spectrum, including point-to-multipoint services.⁵ Despite the name of the service, however, the market for point-to-multipoint services in the LMDS and other area-licensed millimeter wave bands did not develop as anticipated.⁶ Rather than multipoint services, the LMDS and other area-licensed millimeter wave bands are generally used for fixed point-to-point backhaul.

Although the Commission’s rules themselves do not contain explicit safe harbors,⁷ all of the orders establishing the area-licensed millimeter wave bands contain

Disaggregation Rules and Policies for Certain Wireless Radio Services, *Notice of Proposed Rulemaking and Order*, FCC 10-86 at ¶ 2 (2010).

² See WCAI Comments, WT Docket No. 10-112, at pp. 7-8 (filed Aug. 6, 2010).

³ In this pleading, “area-licensed millimeter wave bands” refers to the Local Multipoint Distribution Service (LMDS), 39 GHz band, and 24 GHz band.

⁴ In the Matter of Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, FCC 97-82 at ¶ 261 (1997).

⁵ Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, FCC 97-82 at ¶¶ 267, 270 (1997).

⁶ See Applications Filed by Licensees in the Local Multipoint Distribution Service (LMDS), *Memorandum Opinion and Order*, DA 08-54 at ¶ 6 (2008).

⁷ See 47 C.F.R. §§ 101.1011, 101.17, and 101.527.

an example safe harbor based on four permanent links per one million population.⁸ This metric assumes a “build it and they will come” model – a model that is inapplicable to the models that are actually being used in the area-licensed millimeter wave bands. Licensees in the area-licensed millimeter wave bands are not using their spectrum to self-provision backhaul. Instead, these licensees are using a carrier’s carrier model to offer backhaul and premises access solutions to other carriers, enterprises, and government agencies.⁹

When a carrier’s carrier model is used, links are built on a case-by-case basis only in response to the demands of mobile service providers. Licensees using this model have no market incentive to build more links than their carrier customers require. To the contrary, building links without customer demand would be both economically and spectrally inefficient. Deploying capital expenditures, operational expenditures, and spectral resources to build backhaul in an area where government users and commercial carriers have not ordered such services diminishes the ability of the backhaul carrier to build in areas where the backhaul services are in demand. And using spectrum solely for the purpose of meeting an arbitrary safe harbor provision would serve no one.

⁸ Although the rules themselves do not contain explicit safe harbors, all of the orders establishing the area-licensed millimeter wave bands contain an example based on four permanent links per one million population. See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules, *Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking*, FCC 97-82 at ¶ 270 (1997) (LMDS); In re Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 Bands, *Report and Order and Second Notice of Proposed Rulemaking*, FCC 97-391 at ¶ 46 (1997) (39 GHz); In re Amendments to Parts 1, 2, 87 and 101 to the Commission’s Rules to License Fixed Services at 24 GHz, *Report and Order*, FCC 00-272 at ¶ 38 (2000) (24 GHz).

⁹ See <http://www.fibertower.com/corp/solutions.shtml> (visited April 25, 2011).

For those offering carrier's carrier fixed backhaul links in the area-licensed millimeter wave bands, a more applicable safe harbor is needed. The Commission should find that an area-licensed millimeter wave band licensee has met its obligation to use its spectrum efficiently if the licensee is offering a viable, competitive backhaul option across its license area on a carrier's carrier basis regardless of the number of links built per unit of population. The following factors are relevant to determining whether an area-licensed millimeter wave band licensee is offering a viable, competitive backhaul option on a carrier's carrier basis: (1) it offers its backhaul services or spectrum leases to commercial fixed and mobile service providers or government spectrum users; (2) it is actively marketing its services and leasing opportunities to commercial fixed and mobile service providers or government spectrum users; (3) it offers equipment capable of meeting the backhaul requirements of commercial fixed and mobile service providers or government spectrum users; and (4) it offers its backhaul services or spectrum leases on commercially reasonable terms and conditions.

Adopting the criteria above as a safe harbor would promote certainty for area-licensed millimeter wave band licensees regarding their license renewal requirements and in turn promote the carrier's carrier model. In contrast, requiring these licensees to build a certain number links per a particular unit of population would discourage the carrier's carrier business model. A millimeter wave licensee offering carrier's carrier services can only control its own business plan; the licensee cannot control whether carriers or government users actually demand the licensees' backhaul services in a particular market at a particular time. Without some certainty that a viable carrier's carrier offering would meet the Commission's requirements, licensees and their

investors would need to take a leap of faith that other carriers and government users will demand backhaul in the timeframe and quantity specified by the Commission. Without a more flexible safe harbor based on the particular needs of the carrier's carrier model, investors are unlikely to take that leap of faith. As FiberTower previously commented in this proceeding, "more than 90% of the costs" in a carrier's carrier model must be incurred prior to ever installing a radio.¹⁰ Investors are unlikely to invest so much capital with no control over the outcome of the license renewal process.

To avoid this unintended consequence and promote investment in these bands, the Commission should base its performance evaluation for area-licensed millimeter wave band licensees using a carrier's carrier model on their business plan rather than an arbitrary number of fixed links per population. Wireless networks must have cost-effective backhaul. Promoting the carrier's carrier backhaul model in the area-licensed millimeter wave bands would promote the use of spectrally and economically efficient backhaul for wireless networks and serve the public interest. A carrier's carrier model provides licensees with the ability to serve multiple carriers or government agencies using the same spectrum, and in some cases, the same network. Offering services to multiple users also increases opportunities to put the spectrum to valuable use, which is the primary purpose of license renewal requirements.¹¹ Promoting the carrier's carrier model would also provide licensees and investors with the certainty they need that such a model will satisfy the Commission's renewal requirements. Without such certainty,

¹⁰ Comments of FiberTower, WT Docket No. 10-112 at 15 (filed Aug. 6, 2010).

¹¹ See Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, *Notice of Proposed Rulemaking and Order*, FCC 10-86 at ¶ 53 (2010).

licensees and investors may reconsider their business plans and investments to the detriment of carriers, government spectrum users, and the public.

III. CONCLUSION

The Commission should adopt a new safe harbor for the area-licensed millimeter wave bands that promotes, rather than discourages, the carrier's carrier backhaul model. WCAI respectfully asks that the Commission adopt the proposal set forth above.

Respectfully submitted,

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