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August 8, 2012

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, DC 20554

RE: Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under Part 5 of the Commission's Rules and Streamlining Other Related Rules, ET Docket 10-236

2006 Biennial Review of Telecommunications Regulations – Part 2 Administered by the Office of Engineering and Technology, ET Docket 06-155

Notice of *Ex Parte* Presentation

Dear Ms. Dortch:

Clearwire Corporation ("Clearwire"), a primary licensee in the 2.5 GHz band, is filing this *ex parte* in response to the July 25, 2012 *ex parte* notice filed by The Boeing Company ("Boeing").[1] In that notice, Boeing indicates that it met with OET staff to discuss the coordination and consent conditions imposed on Experimental Radio Service ("ERS") licenses. In particular, Boeing appears to be recommending that OET 1) eliminate the coordination and consent requirements in favor of a notification requirement under some circumstances; and 2) prohibit primary licensees from requesting reimbursement from an ERS applicant for the costs associated with the coordination and consent process.

As Clearwire has made clear in its previous filings in this docket, it has substantial concerns with certain aspects of the existing ERS licensing process.[2] In particular, it has

[1] *See* Letter from Bruce A. Olcott, Counsel to the Boeing Company, to Marlene H. Dorth, Secretary, Federal Communications Commission, ET Docket No. 10-236, ET Docket 06-155 (filed Jul. 25, 2012) ("Boeing's July 25 Letter").

[2] *See* Letter from Cathy Massey and Nadja Sodos-Wallace, Clearwire Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, ET Docket No. 10-236, ET Docket 06-155 (filed May 17, 2012) ("Clearwire's May 17 Letter"); Letter from Cathy Massey, Clearwire Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, ET Docket No. 10-236, ET Docket 06-155 (filed May 31, 2012); Letter from Cathleen A. Massey and Nadja Sodos-Wallace, Clearwire Corporation to

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been Clearwire's experience that many ERS licensees do not abide by the requirement placed on the face of their license that they coordinate their planned ERS use with primary licensees before commencing operations.[3] As a result, primary licensees such as Clearwire devote scarce resources to constantly monitor the ERS database and track down ERS licensees that have proposed a use that might threaten Clearwire's commercial operations and customers. As pointed out in Clearwire's earlier filing, in Clearwire's experience Boeing has been scrupulous about adhering to the coordination requirements of its ERS licenses.[4] Unfortunately, however, Boeing is an exception rather than the rule. Consequently, Clearwire cannot support Boeing's suggestion that the coordination and consent requirements imposed by OET on ERS licenses should be eliminated, or at least substantially reduced.[5] Instead, Clearwire urges the Commission to impose a pre-filing coordination requirement on ERS licensees that would 1) cure the widespread failure of ERS licensees to initiate coordination; 2) provide primary licensees with notice of proposed ERS use potentially affecting their operations; 3) provide both parties with adequate time to assess the potential for interference; and 4) provide ERS applicants greater assurance of the availability of particular frequencies and/or geographic locations before they commit time and money to a particular test plan.[6]

To ensure that pre-filing coordination does not become a deterrent to realizing the important goals of ERS, Clearwire recommended that it be coupled with a 30-day "shot-clock" rule that requires primary licensees to respond to a coordination notice within 30 days and a requirement that both parties work in good faith to successfully coordinate the ERS request.[7] By employing a shot clock, the coordination request would be equivalent to the notification process advocated by Boeing but with one significant difference. The coordination request would permit the primary licensee to preview the proposed ERS use before interference occurs. If interference seems unlikely, then the primary licensee can let the coordination period expire without action. Boeing's proposed notification process, however, requires primary licensees to experience ***actual interference*** to challenge an ERS use. As explained in Clearwire's previous *ex parte*, isolating the source of actual interference as it is occurring is often a complex, resource-intensive scramble to pinpoint the cause of the interference or temporarily patch the problem so that customer service is not degraded or interrupted.[8] Consequently, Boeing's "notification only" proposal would create an unnecessary risk to the operations of primary licensees and increase the potential for interruption of service to customers. Clearwire believes that its "shot clock"

Marlene H. Dortch, Secretary, Federal Communications Commission, ET Docket No. 10-236, ET Docket 06-155 (filed Jun. 21, 2012) ("Clearwire's June 21 Letter"); and Letter from Cathleen A. Massey and Nadja Sodos-Wallace, Clearwire Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, ET Docket No. 10-236, ET Docket 06-155 (filed Jul. 11, 2012) ("Clearwire's July 11 Letter").

[3] *See* Clearwire's May 17 Letter; Clearwire's July 11 Letter.

[4] *See* Clearwire's May 17 Letter at 5 n.8.

[5] *See* Boeing's July 25 Letter at 2-3.

[6] *See* Clearwire's May 17 Letter at 2-5.

[7] *Id*. at 5.

[8] *Id.* at 3.

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proposal is equally protective of the need to shield primary licensees from interference and the ERS applicants' need for a quick resolution of the coordination process.

Boeing also complains about requests from primary licensees for reimbursement of costs associated with coordination of an ERS use. Although not named in the *ex parte*, Clearwire has requested reimbursement from Boeing for coordination costs associated with Boeing's proposed ERS use of 2.5 GHz spectrum located in Clearwire's commercially deployed Seattle, WA market.[9] The location of the proposed ERS use at Boeing Field is sandwiched between downtown Seattle and SEA-TAC International Airport in the heart of Clearwire's Seattle, WA commercial market. Consequently, to protect its commercial operations, Clearwire's network team had to carefully analyze the proposed ERS use and develop a spectrum use plan that would permit Boeing to conduct its experiments while ensuring Clearwire's network and customers remain free from interference.[10] To ensure that both parties were clear on the parameters of the plan, Clearwire's legal team memorialized the plan in an agreement that included a request for reimbursement of Clearwire's costs associated with coordinating Boeing's proposed use. Thus, this single request required the time and resources of Clearwire's legal, regulatory and technical teams.[11]

To be frank, Clearwire is puzzled by Boeing's statements that this request for reimbursement should be prohibited. Coordination fees are a commonplace occurrence anytime licensees share spectrum resources. For example, the rules require coordination for the Part 101 Operational Fixed Service and the Common Carrier Service; the Part 74 Broadcast Auxiliary Service; and the Part 78 Cable Antenna Relay Service all require frequency coordination prior to grant of a license. And each of the coordination requirements has costs associated with it. In addition, there is nothing in the ERS rules to suggest that Clearwire be required to subsidize Boeing's project through the *pro bono* contribution of its staff time and resources. While Clearwire fully supports the goals and benefits of the ERS, it does not agree with Boeing that Clearwire's staff should be required to work on Boeing's behalf without recompense.[12] Clearwire would, however,

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[9] Clearwire understands that Boeing's experiment is important, and because of that has agreed to consent to Boeing's ERS use while the Commission considers both parties' submissions regarding Clearwire's request for reimbursement of its coordination costs.

[10] Often the ERS application will contain only the most basic information regarding the proposed ERS use, requiring Clearwire's technical team to research additional details regarding the ERS licensees' proposed operating parameters and equipment. In addition to the time and resources spent understanding the proposed project, Clearwire's field technicians are required to monitor the impact of the project on Clearwire's operations in case unanticipated interference or other problems arise.

[11] If Boeing's request had been associated with spectrum outside of Clearwire's commercial markets, the complexity and cost of successful coordination would have been less. Boeing's decision to locate its project in the middle of a commercially deployed Clearwire market greatly enhanced the difficulty of accommodating Boeing's proposed ERS use. According to Boeing's website, the company has over 500 testing facilities across the United States, including many in remote locations.

[12] Clearwire does not employ a third-party coordinator such as Comsearch to handle ERS requests. Clearwire's own staff conducts the coordination because Clearwire's spectrum assets are different from market to market and often within a single market. If, however, a third-party coordinator such as

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welcome Commission confirmation of what charges are permitted.[13] Clearwire agrees with Boeing that "payment for approval" would undermine the goals of ERS and in no way endorses the notion that primary licensees should be permitted to profit from coordination of a legitimate ERS request.[14] Clearwire has assumed, however, based on previous OET staff guidance that cost-based charges directly associated with the staff hours and resources devoted to an ERS coordination request are appropriate and would appreciate confirmation of this practice. By continuing to permit cost-based reimbursement, the Commission would strike the appropriate balance between the burdens imposed on primary licensees by the ERS coordination request and the overarching goals of the ERS program to promote innovation and research.

Comsearch could expect payment for its coordination efforts on behalf of an ERS application, Clearwire should also be entitled to reimbursement.

[13] For example, Clearwire would be amendable to guidance that differentiates between ERS coordination costs associated with for-profit corporations such as Boeing and coordination costs associated with non-profit research organizations or universities. A for-profit enterprise such as Boeing – which reported revenues of $69 billion last year – should expect to pay coordination fees in the ordinary course of doing business.

[14] Clearwire has recommended that the Commission follow its existing rules and limit ERS authorizations, including STAs, to applications related to one of the permitted purposes under ERS licensing rules. *See* Clearwire's May 17 Letter at 6-8. Clearwire cited to several examples where the ERS applicant requested access to spectrum for what appeared to be a commercial use with no discernible research or experimental purpose. *Id.* Under such circumstances, Clearwire asserted that a short-term lease of spectrum would be more appropriate. *Id.*

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Finally, Clearwire, as a beneficiary of the ERS itself, recognizes the validity of Boeing's assertion that coordination and consent may be unnecessary when experiments are conducted in a carefully controlled environment. Clearwire, therefore, filed in support of Boeing's "safe harbor" approach.[15] Assuming that the safe harbor is structured appropriately, Clearwire supported Boeing's proposal as a way to simplify the ERS licensing process while protecting primary licensees from interference.

Respectfully submitted,

CLEARWIRE CORPORATION

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[15] .*See* Clearwire's June 21 Letter.