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WT Docket 10-88

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of	)
	)
American Tower Corporation	)
Request for Waiver of	)
47 C.F.R. § 17.47	)

ACCEPTED/FILED

SEP 17 2013

Federal Communications Commission
Office of the Secretary

To: The Commission

REQUEST FOR MODIFICATION OF EXISTING WAIVER

American Tower Corporation ("ATC"), by its attorneys, and pursuant to 47 C.F.R. § 1.925(b), hereby requests that its existing partial waiver of the Commission's rule requiring antenna tower owners to inspect, a minimum of once every three months, all automatic or mechanical control devices, indicators, and alarm systems on towers that must be lit ("QLI Rule")[1] be made complete with regard to all towers that are monitored by ATC's in-house monitoring system (the "ATC System"). Grant of the requested complete waiver would be the next logical and fully supported step in a process initiated by ATC in 2007. A complete waiver would relieve ATC of its existing obligation to make annual on-site inspections of towers, an obligation that no longer serves any discernible purpose, and would further the public interest by encouraging other tower owners to implement technologically advanced monitoring systems.

[1] *See* 47 C.F.R. § 17.47. In addition, the FCC's Rules require tower owners to notify the FAA of any malfunction of a steady burning top light or any flashing obstruction light that cannot be fixed within thirty minutes so that a Notice to Airmen ("NOTAM") can be issued by the Federal Aviation Administration ("FAA"). *See* 47 C.F.R. § 17.48(a).

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I. Background.

The Commission granted ATC a partial waiver of the QLI Rule more than six years ago, in 2007, permitting the company to make annual, rather than quarterly, inspections of its lit towers then monitored by the Eagle Monitoring System ("Eagle System").[2] The *ATC QLI Waiver* was predicated on ATC's extensive factual showings as to how the Eagle System better ensured air navigation safety than did the QLI Rule. For example, as the ATC System does today, the Eagle System which ATC employed at that time generated immediate alerts to ATC's centralized Network Operations Center ("NOC") about lighting problems at remotely monitored sites. These alerts allow ATC to take prompt and immediate action, ranging from facilitating the issuance of timely NOTAMs by the FAA to diagnosing and remedying relevant problems on site. Although ATC's showings in 2007 rationally justified a complete waiver of the QLI Rule, out of an abundance of caution, ATC formally sought, and the FCC granted, only a *partial* waiver allowing annual, rather than quarterly, inspections. The Commission modified the *ATC QLI Waiver* in January 2013 to permit the company, in lieu of the Eagle System, to make use of the ATC System. The Commission found the ATC System to be technologically similar to the Eagle System and to monitoring systems used by numerous other tower owners that had received

[2] In the Matter of Requests of American Tower Corporation and Global Signal, Inc., to Waive Section 17.47(b) of the Commission's Rules, WT Docket No. 05-326, *Memorandum Opinion and Order*, 22 FCC Rcd 9743 (2007) ("*ATC QLI Waiver*").

similar waivers allowing for annual inspections of lit towers.[3] ATC now strongly urges the Commission to acknowledge that the time has come to terminate, through complete waiver, any ATC obligation to make time consuming and expensive annual on-site inspections that serve no discernible public interest purpose.

ATC owns or operates more than 21,000 towers in the United States, 7,058 of which are subject to the Commission's lighting requirements and monitored by the ATC System. Some of these towers are located at sites with limited accessibility, including sites that can be reached only by helicopter or snowcat for significant portions of the year, while others are located in geographical areas where the mobilization costs and time required to perform these annual lighting inspections are excessive and provide no measurable added value. Even with ATC's current waiver of the QLI Rule in place, the company still spends approximately $1.7 million dollars every year conducting the annual tower inspections for towers that are being continuously monitored by the ATC System. This significant expenditure provides no cognizable public interest benefit as information available through the annual on-site inspections is already being provided on a continuous basis to the Network Operations Center staffed 24/7/365 within the ATC System.

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[3] In the Matter of American Tower Corporation Request for Waiver of 47 C.F.R. 17.47(b), *Memorandum Opinion and Order*, 28 FCC Rcd 294 (2013) ("*ATC Modified Waiver*"). In addition to the ATC/Global Signal waivers granted in the *ATC QLI Waiver*, the Commission has granted QLI Rule waivers to Optasite Towers, L.L.C./Eagle System (2007); Crown Castle USA Inc./Crown Monitoring Systems (2007); Global Tower LLC/Flash Technology Monitoring System (2008); Diamond Communications LLC and Diamond Towers LLC/TowerSentry Monitoring Systems (2009); Mobilitie, LLC/Eagle System (2009); and Insite Towers LLC, TowerCo Assets LLC, and TowerCo II LLC/Remote Monitoring Services Model 700 Series Tower Light Monitoring Systems (RMS System) (2010). *See* Petition of Insite Towers LLC and TowerCo Assets LLC and TowerCo II LLC for Waiver of 47 C.F.R. § 17.47(b), DA-10-2006 at n.41.

II. The ATC System's Robust Design Provides Continuous Tower Light Monitoring.

As has been well established and recognized by the Commission in the *ATC QLI Waiver* and other grants of waiver of the QLI Rule, use of the ATC System and comparable monitoring systems provides continuous monitoring of the relevant tower's automatic control devices and alarm systems.[4] This continuous monitoring is achieved by installation of an on-site controller device at each tower connected to the lighting system that, in part, continuously monitors the status of that tower's lights. In the case of the ATC System, each controller is connected to ATC's continuously-staffed NOC, located in Cary, North Carolina. The on-site controller immediately notifies the NOC staff whenever it detects a tower lighting system malfunction and provides ATC's NOC technicians with all of the diagnostic information that could be detected by an on-site visit. It is as if a trained ATC technician were continuously stationed at each monitored tower.

In order to ensure the functionality of each tower's controller device, the ATC System is designed so that the NOC-based hardware proactively contacts each of the monitored sites once every 24 hours. During each of these daily contacts, the ATC System performs a complete diagnostic review of that tower's lighting system, including all of the system's lighting phases (night, day, twilight). If any issues are identified, the ATC System immediately alerts the NOC personnel to perform additional analysis and take the appropriate actions to resolve the problem.

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[4] *See* ATC Modified Waiver, at 5 (noting that "The ATC System is designed to reliably diagnose problems, including any failures of control devices, indicators and alarm systems, within real time."), *see also* In the Matter of Crown Castle USA Inc. Request for Waiver of 47 C.F.R. § 17.47(b), *Memorandum Opinion and* Order, 22 FCC Rcd 21881, ¶ 9 (WTB 2007) (noting that these types of monitoring systems "provide[] the benefits of more rapid response where there has been a lighting failure, and thus the public interest is served with respect to aircraft safety.").

In other words, the ATC System is designed to alert the relevant ATC employees of a problem with a control device or alarm system immediately, or at most within 24 hours. This notification capability provides public interest and public safety benefits that far exceed those derived from merely inspecting control devices and alarm systems on site on a quarterly or annual basis.

The ATC System is designed to capture each alarm or system issue that is detected and store relevant information in a database. The system is also designed to ensure that all necessary diagnostic evaluations are conducted within a 30-minute window from discovery to identify the nature of the issue and determine if a NOTAM should be issued. If a NOTAM is needed, the appropriate FAA Flight Service Station is notified. That NOTAM-related information is also logged into the ATC System.

The ATC System incorporates a number of technological developments that were not included in predecessor systems such as the Eagle System, including a virtual backup NOC. By employing virtual private network technology, the ATC System allows technicians at any location with an internet connection to log in to a cloud-based virtual NOC in the event the primary North Carolina NOC is not functioning. The use of a virtual backup NOC incorporates inherent redundancy into the functioning of the backup NOC. Different technicians will utilize their own unique internet connections from various remote locations. If one Internet provider's service is impaired, technicians using other Internet providers may continue to operate the NOC and the ATC System's monitoring functions.

The robust design of the ATC System and its use of redundant safeguards ensure that the ATC System provides the company with up-to-the-minute information about monitored towers in a way that could not have been imagined when the QLI Rule was adopted more than sixty

years ago. In addition, the ATC System and comparable systems have now been in operation for a long enough period of time to provide the highest level of confidence in their reliability. The ATC System, plain and simple, tells ATC what it needs to know about what is happening at remotely monitored sites, in the functional equivalent of real time. Annual on-site inspections do nothing to supplement, support or enhance that capability.

III. Existing Quarterly Inspection Waivers Have Generated A Compelling Data Set.

ATC began installing the Eagle System on its lit towers in 2000. During the past six plus years, subject to, first, the *ATC QLI Waiver* and subsequently the *ATC Modified Waiver*, ATC has made seamless use of the Eagle System and the ATC System. The use of these technologically robust systems over such an extended time has established a comprehensive and compelling real-world record that demonstrates that the use of such advanced monitoring systems obviates the need for any FCC-mandated on-site inspections. Since it obtained the *ATC QLI Waiver* in 2007 allowing for annual inspections, ATC has conducted more than 39,000 on-site inspections of its towers that employ either the Eagle System or the ATC System, at an estimated cost of $9.8 million dollars. None of those on-site inspections revealed any tower lighting system malfunctions that had not been previously identified or addressed by the on-site monitoring system installed by ATC. In other words, none of the 39,000 plus on-site inspections ATC conducted at sites monitored by the Eagle System or the ATC System has provided any real benefit despite their significant cost.

The strong and successful performance record of ATC's remote monitoring of its various sites for so many years confirms that the time is now ripe to modify the *ATC QLI Waiver* to make it complete. The reality is that the showing ATC made *in 2007* was sufficient to justify a complete waiver of the QLI Rule *at that time*. An annual inspection requirement was then left in place only because the novelty of the waiver request led the FCC to be abundantly cautious, in

case the monitoring systems did not perform as designed. But the FCC now knows the systems across the industry work, seamlessly and consistently over an extended period of time. Therefore, the exact same considerations which justified partial waiver of the QLI Rule nearly six years ago now justify a complete waiver of that rule, one that encompasses the *annual* inspection requirement. This would be an entirely logical, and amply justified, result.

IV. **The Requested Waiver Would Significantly Further The Public Interest.**

The Commission's rules provide that it may grant waiver of a rule if the rule's underlying purpose would not be served by its application and that a granting of the requested waiver would be in the public interest.[5] Both of these criteria are satisfied here.

First, the underlying purpose of the QLI Rule would not be served by its continued application to the ATC System. Indeed, the Commission has previously found that monitoring systems such as the ATC System "provide sufficiently robust monitoring of the control devices, indicators and alarm systems so as to render quarterly inspections unnecessary," warranting a waiver of the QLI Rule to permit only annual inspections.[6] That same robust monitoring system justifies the complete waiver requested herein. Furthermore, the technological enhancements incorporated into the ATC System, including the state-of-the-art NOC capability, further enhance that monitoring system's capability and further demonstrate that the purpose of the QLI Rule is not advanced by annual on-site inspections of towers monitored by the ATC System. There is simply no need for an ATC technician to make such mandated inspections of tower control devices that are already being monitored on a continuous basis. Any problem with the tower control device will be detected within 24 hours by the ATC System and any necessary

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[5] 47 C.F.R. § 1.925(b).

[6] ATC Modified Waiver, at ¶ 3.

NOTAMS and on-site repairs will promptly ensue, whereas the same problem could go undetected for up to three months on a tower inspected in compliance with the less-stringent requirements of the QLI Rule.

Secondly, granting of this requested waiver would further the public interest. Implementation of advanced technologies, such as the ATC System, is expensive – installation of the ATC System at a single tower location can cost up to $3,600. Elimination (through granting of this requested complete waiver) of the substantial additional costs that attend unnecessary mandated on-site annual inspection visits would serve as a strong incentive to promote further adoption of technologically advanced systems that provide continuous monitoring of tower lighting control systems. As the Commission has noted, the use of these types of systems "provides the benefits of more rapid response where there has been a lighting failure, and thus the public interest is served with respect to aircraft safety."[7]

The FCC's decision nearly six years ago to leave an annual on-site inspection requirement in place was an exercise in understandable, abundant caution. Such caution, however, is no longer necessary. The time has come to waive the QLI Rule in its entirety for lighted towers monitored by the ATC System, relief which is respectfully requested.

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[7] *See ATC QLI Waiver*, ¶ 11.

V. Conclusion.

For all of the foregoing reasons, American Tower Corporation respectfully requests that the Commission grant the requested complete waiver of the QLI Rule.

Respectfully submitted,

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