



PUBLIC NOTICE

Federal Communications Commission
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON FIBERTOWER, INC. REQUEST FOR WAIVER OF SECTIONS 101.103 AND 101.115 OF THE COMMISSION'S RULES TO PERMIT THE USE OF 0.61 METER ANTENNAS IN THE 10.7 – 11.7 GHZ BAND

Comment Date: February 3, 2005

Reply Date: February 14, 2005

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on a request by FiberTower, Inc. (FiberTower)¹ for waiver of Sections 101.103 and 101.115 of the Commission's Rules, 47 C.F.R. §§ 101.103, 101.115, to permit the use of 0.61 meter (two-foot) antennas as an optional alternative to the 1.22 meter (four-foot) antennas presently required for use in the Fixed Microwave Service in the 10.7 – 11.7 GHz (11 GHz) band. *See* 47 C.F.R. 101.115(b). FiberTower filed the waiver request, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, on October 22, 2004 seeking immediate relief pending Commission action on a petition for rulemaking that it filed on July 14, 2004 to amend the Commission's Rules that currently require the use of antennas at least 1.22 meters in diameter in the 11 GHz band.² FiberTower contends that a grant of the waiver will permit it to use 0.61 meter antennas in the 11 GHz band to provide backhaul via sites that are not accessible to 1.22 meter antennas under the Commission's present rules, thereby facilitating wireless operators to expand service rapidly to more customers and to roll-out new service offerings.

By way of background, FiberTower focuses on the business of backhauling wireless traffic to cell phone base stations.³ According to FiberTower, increasing customer demand for broadband services will increase the demand for local backhaul.⁴ FiberTower contends that the optional use of small, 0.61 meter

¹ FiberTower, Inc., Petition for Waiver Pending Rulemaking (filed Oct. 22, 2004) (Waiver Request); *see also* Letter from Mitchell Lazarus, Esq., Fletcher, Heald, and Hildreth, P.L.C., to Marlene H. Dortch, Secretary, FCC (filed Dec. 2, 2004) (reporting an oral *ex parte* meeting between FCC staff and FiberTower); Letter from Mitchell Lazarus, Esq., Fletcher, Heald, and Hildreth, P.L.C., to Joel Taubenblatt, Chief, Broadband Division, Wireless Telecommunications Bureau, FCC (filed Dec. 22, 2004) (providing additional information concerning the importance of prompt action on its waiver request).

² FiberTower, Inc., Petition for Rulemaking (filed July 14, 2004) (FiberTower Petition). The rulemaking, Amendment of Part 101 of the Commission's Rules to Increase Spectrum Use Through More Flexible Antenna Rules for the 10.7 -11.7 GHz Band, has been docketed as RM-11043. Parties that filed comments or reply comments in the rulemaking proceeding must address the instant Waiver Request in comments and/or reply comments filed in accordance with this *Public Notice* if they wish for the Commission to take them under consideration in deciding whether to grant FiberTower the requested waiver.

³ Waiver Request at 1 n.1.

⁴ *Id.* at 6.

antennas in the 11 GHz band will promote the efficient use of the spectrum.⁵ FiberTower contends that fixed service (FS) licensees have a special need for flexibility in the use of their spectrum because the Commission has reallocated FS spectrum to other services in recent years and because the new spectrum available to FS is suitable only for short-range applications.⁶ In addition to spectrum efficiency, FiberTower also argues that the lower cost and smaller size of the 0.61 meter antennas will permit more practical installation at sites incapable of supporting 1.22 meter antennas, allow for the inexpensive last-mile delivery of broadband service to locations that are otherwise prohibitively expensive or impossible to reach, and prompt new competition over a broad range of services, including wireless local loop, T-1 transport and broadband Internet access.⁷

FiberTower states that it is in the public interest for the Commission to immediately authorize 0.61 meter antennas in the 11 GHz band because FiberTower offers five conditions to eliminate any downside risk. First, FiberTower states that any antennas erected pursuant to the waiver must conform to the specific technical specifications set forth in the appendix attached to both the Petition for Rulemaking and the Waiver Request.⁸ Second, FiberTower explains that licensees and users permitted to erect a 0.61 meter antenna for use in the 11 GHz band by authority of the waiver must comply with the outcome of proceeding RM-11043 and any related rulemaking.⁹ Third, FiberTower proposes that a licensee or prior applicant using an antenna under the waiver may object to a prior coordination notice (i) only if it has actual grounds to object because of predicted interference, and (ii) only to the extent it would have grounds to object if it were using a compliant (non-waivered) antenna at the same site, polarization, frequency, bandwidth, and orientation.¹⁰ Fourth, FiberTower would require that a Fixed Service applicant attempting to frequency coordinate a non-waivered antenna, or an applicant for a Fixed Satellite Service earth station, that predicts received interference from a licensee or prior applicant using an antenna under the waiver, can require the licensee or prior applicant to reduce the predicted interference to levels no higher than would be predicted from a compliant (non-waivered) antenna, within the current frequency coordination time limits.¹¹ Fifth, FiberTower agrees to limit installations under the waiver to 500 units per year.¹² FiberTower therefore concludes that the proposed conditions make the existence of 0.61 meter

⁵ *Id.* at 6-7.

⁶ *Id.* at 8. Specifically, FiberTower argues that the need to reallocate the FS licensees from spectrum assigned to other services has placed great pressure on the remaining FS bands capable of handling reasonably long links (*i.e.*, the 4, 6, 11, 18, and 23 GHz bands). FiberTower notes that the use of high-frequency microwave bands (*i.e.*, the 18, 23, 24, and 39 GHz bands) is impractical in large parts of the country for anything other than short links because of rain fade and the use of low-frequency microwave bands (*i.e.*, the 4 and 6 GHz bands) is difficult to frequency-coordinate in heavily populated areas where demand for backhaul is greatest. Moreover, with respect to the 18 GHz and 23 GHz bands, FiberTower contends that scant spectrum remains available in the former after the Commission's recent reallocation and Federal government installations in the latter limit private use.

⁷ *Id.* at 7.

⁸ *Id.* at 8.

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² *Id.* at 10.

antennas completely transparent to other users and place any resulting burden on users opting to erect 0.61 meter antennas.

Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, provides that a waiver of the Commission's Rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or if the applicant has no reasonable alternative.

Interested parties may file comments on the waiver request on or before February 3, 2005. Parties interested in submitting reply comments must do so on or before February 14, 2005. All comments should reference the subject waiver request including the DA number of this *Public Notice*, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20054. A copy of each filing should be sent to (1) Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; (2) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 12th Street, S.W., Room CY-B529, Washington, D.C. 20554; and (3) Brian Michael Wondrack, Esq., Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-A331, Washington, D.C. 20554.

The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

The full text of the waiver request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its web site, <http://www.bcpweb.com>, by email at fcc@bcpweb.com, by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* Sections 1.1200(a),

1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice, ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Brian Michael Wondrack, Esq., of the Broadband Division, Wireless Telecommunications Bureau at (202) 418-0653, TTY (202) 418-7233, or via e-mail to Brian.Wondrack@fcc.gov.

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau, Federal Communications Commission.

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