

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)
)
Petition of Optasite Towers L.L.C. for Waiver of)
Section 17.47(b) Of the Commission's Rules)

MEMORANDUM OPINION AND ORDER

Adopted: October 15, 2007

Released: October 15, 2007

By the Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses the request of Optasite Towers L.L.C. ("Optasite") for waiver of Section 17.47(b) of the Commission's Rules, 47 C.F.R. § 17.47(b). Section 17.47(b) provides that the owner of any antenna structure that is registered with the Commission and has been assigned lighting specifications pursuant to Part 17 "[s]hall inspect at intervals not to exceed 3 months all automatic or mechanical control devices, indicators, and alarm systems associated with the antenna structure lighting to insure that such apparatus is functioning properly."¹ Optasite owns and operates 350 tower sites throughout the United States. Forty-six towers at these sites are subject to the quarterly inspection requirement.

2. Optasite argues that the quarterly inspections of antenna monitoring systems mandated by Section 17.47(b) of the Rules have been rendered unnecessary because of technological advancements associated with the particular monitoring system that it employs -- the Eagle Monitoring System ("Eagle System") developed by Flash Technology ("Flash"). Optasite asks the Commission to waive the rule to permit annual inspections instead for the antenna structures that use this system. For the reasons set forth below, we grant Optasite its request for relief.

II. BACKGROUND

3. On May 15, 2007, the Commission released an order granting to the American Tower Corporation ("ATC") and to Global Signal, Inc. (GSI) waivers of Section 17.47(b) of the Rules to allow annual, rather than quarterly, inspection of towers monitored by specified, technologically advanced monitoring systems.² Optasite filed the instant waiver request on August 15, 2007, seeking the same relief that was granted to ATC and GSI. Optasite states in its petition that the monitoring system it uses, the Eagle System, is the same system used by ATC.³ In this regard, Optasite notes that the ATC Waiver Request and related submissions of ATC in WT Docket No. 05-326 provided the Commission with a detailed description of the relevant features of the Eagle System, and requests that the Commission

¹ 47 C.F.R. § 17.47(b).

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/GSI Waiver Order).

³ See *Optasite Waiver Request* at pp. 2-3.

incorporate that information by reference in the *Optasite Waiver Request*.⁴

III. DISCUSSION

4. Section 1.925 of the Commission's Rules provides that, with respect to wireless telecommunications services, the Commission may grant a request for waiver if it is shown that: "(i) 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 (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."⁵ As discussed below, we grant a waiver to Optasite because we find that application of the quarterly inspection requirements of Section 17.47(b) to the towers in question is not necessary to serve the underlying purposes of the rule, and grant of the waiver is in the public interest. Based on the evidence presented, strict application of the rule to Optasite would be unduly burdensome and contrary to the public interest.

5. The earlier *ATC Waiver Request* described the Eagle System as having self-diagnostic functions that are sufficiently robust so as to make quarterly inspection unnecessary to ensure that the control devices, indicators, and alarm systems on the towers are operating properly. Specifically, ATC maintained that the Eagle System provides the functional equivalent of a continual inspection of control devices from one central location and that users of this system will be alerted to actual and potential problems immediately, in many cases, or at most within 24 hours.⁶ ATC described the following features of the Eagle System:

(1) *Alarm notification.* The lighting system installed at the tower site is equipped with Eagle software that contacts the Alarm Response Center (ARC) for every type of "alarm." ATC categorizes these alarms as "major alarms" (beacon/strobe failure, beacon/strobe communication failure, filter failure, low flash energy, consecutive missed flashes, photo cell failure, power failure, and site communication failure) and "minor alarms" (AC power failure, DC power failure, and side marker failure).⁷ These alarms have automated escalations within the ARC to ensure proper diagnostics are conducted within a 30 minute window. Within the time frame, the ARC contacts the site and performs full lighting system diagnostics to identify the nature of a lighting failure and to determine if issuance of a Notice to Airmen ("NOTAM") is necessary.⁸

⁴ See Request for Waiver, 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, filed by American Tower Corporation (May 19, 2005) ("*ATC Waiver Request*"). See also Letter from Dennis P. Corbett and John W. Barwell, Leventhal Senter & Lerman PLLC, and H. Anthony Lehv, Senior Vice President, Associate General Counsel and Chief Compliance Officer, American Tower Corporation, to Jeffrey S. Steinberg, Deputy Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau (November 14, 2005) (*ATC Supplement*). This additional information was provided in response to a request by the Wireless Telecommunications Bureau's Spectrum and Competition Policy Division. See Letter from Jeffrey S. Steinberg, Deputy Chief, Spectrum and Competition Policy Division, Wireless Telecommunications Bureau, to Dennis P. Corbett, Leventhal Senter & Lerman PLLC (September 29, 2005). As requested by Optasite, all of the information about the Eagle System contained within the documents listed in this note are incorporated by reference in the *Optasite Waiver Request*.

⁵ 47 C.F.R. § 1.925(b)(3).

⁶ *ATC Waiver Request* at 2.

⁷ *ATC Supplement* at 4-5.

⁸ Antenna structure owners "shall report immediately by telephone or telegraph to the nearest Flight Service Station or office of the Federal Aviation Administration any observed or otherwise known extinguishment or improper functioning of any top steady burning light or any flashing obstruction light, regardless of its position on the antenna (continued....)

(2) *24-hour polling.* The Eagle System is programmed to call each and every site once every 24 hours regardless of the independent on-site lighting system notification. This call is automated and runs a full diagnosis of the lighting system. This diagnosis is completed for all lighting phases (i.e., night, day, twilight) regardless of the time of day. This process ensures the lighting system is both working and communicating properly with the Eagle System.

(3) *Manual contact.* The Eagle System allows for a manual diagnostic review of any tower monitored by the system from any computer.⁹

6. The Eagle monitoring system has a Network Operations Call ("NOC") center that is staffed with trained personnel capable of responding to alarms and that has the ability to communicate during limited power outages. It is significant that the Eagle System includes a backup NOC center in the event of catastrophic failure at the primary NOC center, and specific procedures to follow in the event of such a catastrophic failure.

7. Like ATC, Optasite states that, particularly for towers in remote locations, quarterly inspection imposes a substantial and unnecessary resource burden. Optasite contends that without relief it will continue to carry out 184 quarterly inspections each year without a discernible public interest benefit.¹⁰ Optasite estimates that it costs the company annually over \$147,000 and over 1,700 person-hours to comply with the Commission's quarterly inspection requirement.¹¹ As was the case with ATC, Optasite asserts that not a single incident has ever been discovered during any of these quarterly inspections that required the issuance of a NOTAM under FCC rules.¹²

8. For the reasons cited by the Commission in the *ATC/GSI Waiver Order*, we find that the *Optasite Waiver Request*, together with the evidence incorporated by reference from the previous *ATC Waiver Request* and *ATC Supplement*, establishes that quarterly inspections are unnecessary for those Optasite towers using Flash's Eagle monitoring system.¹³ Features of this system provide sufficiently robust monitoring of the control devices, indicators and alarm systems so as to render quarterly inspections unnecessary, thus warranting grant of Optasite's waiver request. We conclude that Optasite is operating a safe and reliable monitoring system with tracking mechanisms to evaluate the remote monitoring technology. Indeed, such advanced technology 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. In addition, granting Optasite's request for waiver will save Optasite hundreds of thousands of dollars and thousands of person-hours that are unnecessarily spent on quarterly inspections annually where it has deployed this advanced technology.

IV. CONCLUSION

9. For the reasons discussed above, we waive Section 17.47(b) to allow Optasite, for its towers monitored using the Eagle system, to conduct inspections required by that section on an annual,

(...continued from previous page)
structure, not corrected within 30 minutes." 47 C.F.R. § 17.48(a). See FAA Circular AC-70/7460-1K, Chapter 2, Light Failure Notification.

⁹ *ATC Supplement* at 5.

¹⁰ *Optasite Waiver Request* at 2.

¹¹ *Id.*

¹² *Id.* at 2-3.

¹³ *ATC/GSI Waiver Order*, 22 FCC Rcd at 9747, 9748, ¶¶ 11, 17.

rather than a quarterly, basis. The Eagle monitoring system reliably diagnoses problems, including any failures of control devices, indicators and alarm systems, within real time, and therefore renders strict application of the rule unnecessary to serve its underlying purpose. Moreover, this waiver will relieve Optasite of the burden of performing unnecessary quarterly inspections. In addition, granting this waiver request will encourage other tower owners to invest in similar state-of-the-art technologies so that they too will become capable of continuous monitoring of both their lighting systems and control devices.

10. We note that PCIA has filed a Petition for Rulemaking in which it requests, among other things, to amend Section 17.47(b) of the rules so as to exempt systems using NOC-based monitoring technology from the quarterly inspection requirement.¹⁴ PCIA's Petition for Rulemaking was placed on Public Notice to allow interested persons to file statements opposing or supporting it.¹⁵ This petition is currently pending before the Commission, and the waiver that we grant today is subject to any rule changes that the Commission may promulgate in that proceeding.

V. ORDERING CLAUSE

11. Pursuant to Sections 4(i), 303(q), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(q), 303(r), and pursuant to Sections 0.131, 0.331, and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, the Request for Waiver filed by Optasite IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Fred B. Campbell, Jr.
Chief, Wireless Telecommunications Bureau

¹⁴ Petition for Rulemaking, RM-11349, In the Matter of Amendments to Modernize and Clarify Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, filed by PCIA – The Wireless Infrastructure Association on September 12, 2006.

¹⁵ Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed, *Public Notice*, Report No. 2794 (rel. October 30, 2006). Comments were due on November 29, 2006.