

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

In the matter of
Joint Petition of Diamond Communications LLC,
Diamond Towers LLC, Diamond Towers II LLC,
and Diamond Towers III LLC for Waiver of
47 C.F.R. § 17.47(b)

MEMORANDUM OPINION AND ORDER

Adopted: September 20, 2012

Released: September 20, 2012

By the Associate Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This Memorandum Opinion and Order addresses the joint petition of Diamond Communications LLC, Diamond Towers LLC, Diamond Towers II LLC, and Diamond Towers III LLC (collectively "Diamond") 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 Diamond estimates that it will spend over \$105,000 and over 2,000 person-hours annually complying with the quarterly inspection requirement for the towers subject to this petition.2

2. Diamond argues that the quarterly inspections of antenna structure lighting monitoring systems mandated by Section 17.47(b) of the Rules have been rendered unnecessary for its towers that employ the Flash Technology Tower Monitoring System ("FTTMS") because of technological advancements associated with that system.3 Diamond asks the Commission to waive the rule to permit annual inspections instead for Diamond's antenna structures that use this system. For the reasons set forth below, we grant Diamond its request for relief from its obligations as tower owner under Section 17.47(b) of the Commission's Rules to perform quarterly inspections of the monitoring systems on these towers, and instead permit it to perform annual inspections. We further determine, on our own motion, that we will grant similar waivers to other tower owners using the FTTMS, in an expedited manner, upon submission and review of a streamlined petition containing certain certifications as described below.

1 47 C.F.R. § 17.47(b).

2 In the matter of Joint Petition of Diamond Communications LLC, Diamond Towers LLC, Diamond Towers II LLC, and Diamond Towers III LLC for Waiver of 47 C.F.R. § 17.47(b), Petition for Waiver, filed August 15, 2012 (Diamond Waiver Petition) at 3. Diamond Communications LLC and Diamond Towers LLC received a similar waiver in 2009 for their towers that utilize the TowerSentry Monitoring Systems. See In the matter of TowerSentry LLC Request for Waiver of 47 C.F.R. § 17.47(b) and Joint Petition of Diamond Communications LLC and Diamond Towers LLC for Waiver of 47 C.F.R. § 17.47(b), Memorandum Opinion and Order, 24 FCC Rcd 10274 (WTB 2009) (TowerSentry/Diamond Waiver Order).

3 Id.

II. BACKGROUND

3. The Commission and the Wireless Telecommunications Bureau have previously granted waivers of Section 17.47(b) to antenna structure owners who demonstrated that they were operating safe and reliable monitoring systems that provide sufficiently robust monitoring of the control devices, indicators and alarm systems so as to render quarterly inspections unnecessary.⁴ The Airspace and Rules Group of the Federal Aviation Administration has stated that it is not opposed to such waivers “provided the applicant can demonstrate a safe and reliable automatic monitoring system with tracking mechanisms to evaluate the remote monitoring technology.”⁵ Notably, on November 12, 2008, we granted such relief to Global Tower LLC (“Global Tower”) for towers that it owns based on its use of the FTTMS technology, which compared favorably with other monitoring systems that had supported previous waivers.⁶

4. Diamond filed its instant waiver petition on August 15, 2012, seeking the same relief Global Tower was previously granted. Diamond asserts in its petition that it uses the same FTTMS technology as Global Tower; that this technology is sufficiently robust and reliable to warrant the granting of its Petition for Waiver; and that it maintains a facility to receive notifications of failures from the FTTMS, enabling Diamond to carry out its responsibilities under Part 17 of the Commission’s rules.⁷

III. DISCUSSION

5. 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.”⁸ As discussed below, we grant a waiver to Diamond 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 Diamond would be unduly burdensome and contrary to the public interest.

6. As noted above, Global Tower LLC has previously been granted a waiver for towers it owns that are monitored by the FTTMS because this monitoring system was deemed to “provide sufficiently robust monitoring of the control devices, indicators and alarm systems so as to render quarterly inspections unnecessary.”⁹ For the reasons cited by the Bureau in the *Global Tower Waiver Order*,¹⁰ we conclude, based upon the uncontested evidence submitted in the record by Diamond, that the

⁴ See e.g., 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); Petition of Optasite Towers L.L.C. for Waiver of Section 17.47(b) of the Commission’s Rules, *Memorandum Opinion and Order*, 22 FCC Rcd 18456 (WTB 2007).

⁵ Brief Comment of Office of Airspace and Rules, FAA, WT Docket No. 05-326, filed December 4, 2006.

⁶ In the Matter of Request of Global Tower LLC for Waiver of 47 C.F.R. § 17.47(b), *Memorandum Opinion and Order*, 23 FCC Rcd 16531 (WTB 2008) (*Global Tower Waiver Order*).

⁷ *Diamond Waiver Petition* at 1-3, 5, Attachment.

⁸ 47 C.F.R. § 1.925(b)(3).

⁹ *Global Tower Waiver Order* at 5.

¹⁰ *Id.* at 2-5.

Diamond Waiver Petition establishes that quarterly inspections are unnecessary for those Diamond towers monitored by the FTTMS, and we therefore grant Diamond's waiver petition.

7. We further determine, on our own motion, that for other tower owners using the FTTMS, we will grant, in an expedited manner, waivers upon submission and review of a streamlined petition containing certain certifications. Specifically, any waiver applicant shall submit a certification that: (1) its towers are monitored by the FTTMS under the process described in the *Global Tower Waiver Order*;¹¹ and (2) it maintains a facility to receive notifications of failures from the FTTMS, which will enable the tower owner to carry out its responsibilities under Part 17 of the Commission's rules.¹² We find the latter certification necessary to ensure that tower owners receiving waivers remain equipped to comply with the Commission's regulations. The certification shall be signed, under penalty of perjury, by a company officer (or partner, sole proprietor or similar person able to act on behalf of the tower owner) with knowledge of the underlying facts. In the event a lessee or other designee actually receives and responds to notifications of failure, both the tower owner and the lessee/designee should submit certifications attesting to the facts within their knowledge. To ensure timely processing, waiver requests should be e-mailed to part17@fcc.gov.

IV. CONCLUSION

8. For the reasons discussed above, we waive Section 17.47(b) to allow Diamond, for its towers monitored using the FTTMS, to conduct inspections required by that section on an annual, rather than a quarterly, basis. We further establish an expedited process for other users of the FTTMS to obtain similar waivers. The FTTMS 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, our action will relieve Diamond and potentially other users of the FTTMS of the burden of performing unnecessary quarterly inspections. In addition, granting Diamond a waiver, as well as implementing an expedited waiver process for other tower owners that employ the FTTMS, will further encourage tower owners to invest in state-of-the-art technologies so that they too will become capable of continuous monitoring of both their lighting systems and control devices.

9. We note that the Commission has released a Notice of Proposed Rulemaking seeking comment on proposed changes to part 17 of the Commission's rules and this determination is subject to any rule changes that the Commission may promulgate in that proceeding.¹³

¹¹ *Id.* at 3-4.

¹² See *TowerSentry/Diamond Waiver Order*, 24 FCC Rcd at 10279; In the matter of Request of Mobilitie, LLC for Waiver of 47 C.F.R. § 17.47(b) and Flash Technology Request for Waiver of 47 C.F.R. § 17.47, *Memorandum Opinion and Order*, 24 FCC Rcd 11949, 11952 (WTB 2009).

¹³ In the Matter of Amendments to Modernize and Clarify Part 17 of the Commission's Rules Concerning Construction, Marking and Lighting of Antenna Structures, RM 11349, *Notice of Proposed Rulemaking*, 25 FCC Rcd 3982, 75 FR 28517 (2010).

V. ORDERING CLAUSE

10. 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 Petition for Waiver filed by Diamond IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Jane E. Jackson
Associate Chief, Wireless Telecommunications Bureau