

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

In the matter of)
)
Crown Castle USA Inc.)
AT&T Services Inc.)
Request for Waiver of)
47 C.F.R. § 17.47(b))

MEMORANDUM OPINION AND ORDER

Adopted: April 26, 2012

Released: April 26, 2012

By the Associate Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses the joint request of Crown Castle USA Inc. (“Crown Castle”) and AT&T Services, Inc. (“AT&T”) 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 Crown Castle and its affiliates and subsidiaries lease from AT&T 1,564 towers that are subject to the quarterly inspection requirement.

2. Crown Castle and AT&T argue that the quarterly inspections of antenna structure lighting monitoring systems mandated by Section 17.47(b) of the Rules have been rendered unnecessary because of technological advancements associated with the particular monitoring systems that Crown Castle employs -- the Opto 22 B3000 and Simple Com Tools Com 3000 Monitoring Systems (“Crown Monitoring Systems”). Crown Castle and AT&T ask the Commission to waive the rule to permit annual inspections instead for AT&T’s antenna structures that use these systems. For the reasons set forth below, we grant AT&T 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.² We further determine, on our own motion, that we will grant similar waivers to other tower owners using the Crown Monitoring Systems, in an expedited manner, upon submission and review of a streamlined petition containing certain certifications as described below.

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,

¹ 47 C.F.R. § 17.47(b).

² Because AT&T as the tower owner is responsible for complying with 47 C.F.R. § 17.47(b), we find that no waiver is needed with respect to Crown Castle. *See* para. 5, *infra*; 47 C.F.R. § 17.2(c).

indicators and alarm systems so as to render quarterly inspections unnecessary.³ 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.”⁴ Notably, on December 27, 2007, we granted such relief to Crown Castle for towers that it owns based on its use of technology (the Crown Monitoring Systems) that compared favorably with other monitoring systems that had supported previous waivers.⁵

4. Crown Castle and AT&T filed their instant waiver request on December 22, 2011, seeking the same relief Crown Castle was previously granted in 2007.⁶ Crown Castle and AT&T assert in their petition that the Crown Monitoring Systems are sufficiently robust, accurate and reliable to warrant the granting of their joint Request for Waiver.⁷ Crown Castle and AT&T attach to their petition exhibits describing relevant features of the Crown Monitoring Systems in detail.⁸

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.”⁹ As discussed below, we grant a waiver to AT&T 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 AT&T would be unduly burdensome and contrary to the public interest. Because AT&T is the owner of the 1,564 leased towers relevant to this petition, it is ultimately responsible for complying with Section 17.47(b) with respect to these towers, and therefore no waiver with respect to Crown Castle is necessary.¹⁰ However, on our own motion, we extend relief to Crown Castle’s other customers by means of an expedited waiver process as discussed below.

6. As noted above, Crown Castle has previously been granted a waiver for towers it owns that are monitored by the Crown Monitoring Systems because these monitoring systems were deemed to “provide sufficiently robust monitoring of the control devices, indicators and alarm systems so as to

³ 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).

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

⁵ 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 (WTB 2007) (*Crown Castle Waiver Order*).

⁶ In the Matter of Crown Castle USA Inc., AT&T Services, Inc. Request for Waiver of 47 C.F.R. § 17.47(b), Request for Waiver, dated December 15, 2011 and filed December 22, 2011 (*Crown Castle and AT&T Waiver Request*).

⁷ *Id.* at 4-7.

⁸ *Id.* at Exhibits A, B and C.

⁹ 47 C.F.R. § 1.925(b)(3).

¹⁰ See 47 C.F.R. § 17.2(c) (clarifying that the “individual or entity vested with ownership, equitable ownership, dominion, or title to the antenna structure” is “ultimately responsible for compliance with the requirements of” Part 17).

render quarterly inspections unnecessary.”¹¹ For the reasons cited by the Bureau in the *Crown Castle Waiver Order*,¹² we conclude, based upon the uncontested evidence submitted in the record by Crown Castle and AT&T, that the *Crown Castle and AT&T Waiver Request* establishes that quarterly inspections are unnecessary for those AT&T towers monitored by the Crown Monitoring Systems, and we therefore grant AT&T’s waiver request.

7. We further determine, on our own motion, that for other tower owners using the Crown Monitoring Systems, 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 Crown Monitoring Systems under the process described in the *Crown Castle Waiver Order*;¹³ and (2) it maintains a facility to receive notifications of failures from the Crown Monitoring Systems, which will enable the tower owner to carry out its responsibilities under Part 17 of the Commission’s rules.¹⁴ 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, such as Crown Castle, actually receives and responds to notifications of failure, both the tower owner and the lessee 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 AT&T, for its towers leased to Crown Castle and monitored using the Opto 22 B3000 and Simple Com Tools Com 3000 Monitoring Systems, 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 Crown Monitoring Systems to obtain similar waivers. The Crown Monitoring Systems reliably diagnose 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 AT&T and potentially other users of the Crown Monitoring Systems of the burden of performing unnecessary quarterly inspections. In addition, granting AT&T a waiver, as well as implementing an expedited waiver process for other tower owners that employ the Crown Monitoring Systems, 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

¹¹ *Crown Castle Waiver Order* at 4.

¹² *Id.* at 2-4.

¹³ *Id.* at 2-3.

¹⁴ 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, 10279 (WTB 2009) ; In the matter of Request of Mobilite, 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).

any rule changes that the Commission may promulgate in that proceeding.¹⁵

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 joint Request for Waiver filed by Crown Castle and AT&T IS GRANTED with respect to AT&T and is otherwise DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION

Jane E. Jackson
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¹⁵ 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).