



Federal Communications Commission
Washington, D.C. 20554

June 14, 2013

DA 13-1380

Mr. Graham Stone
OEM Communications LLC
56 Sioux Lane
San Ramon, CA 94583

Mr. Christopher R. Hardy
Vice President
Comsearch
19700 Janelia Farm Boulevard
Ashburn, VA 20147

In re: OEM Communications LLC
Applications for New Common Carrier Fixed Point-to-
Point Microwave Stations
File Nos. 0004792571, 0004792606, 0004792617

Dear Messrs. Stone and Hardy:

In this letter, we grant in part and deny in part an informal objection filed by Comsearch against applications filed by OEM Communications LLC (“OEM”) for New Common Carrier Fixed Point-to-Point Microwave Stations. While we find that the instant applications can be granted, we impose a series of conditions to ensure that OEM’s proposed system is in compliance with the Commission’s rules.

OEM filed the instant applications on July 6, 2011.¹ In a statement accompanying the Applications, OEM stated that while Comsearch had originally cleared the proposed facilities, it subsequently withdrew the clearance and requested additional information.² Subsequently, according to OEM, on June 28, 2011, Comsearch submitted an objection to the proposed facilities.³ OEM argued that Comsearch was seeking “trade secret information regarding network and antenna design” and argued that Comsearch’s objection should be disregarded because it was submitted more than 30 days after OEM requested coordination of the proposed facilities.⁴

Comsearch responded by filing an informal objection on August 9, 2011.⁵ Comsearch initially admits that its communications were confusing and that its handling of OEM’s coordination notices were

¹ File Nos. 0004792571, 0004792606, 0004792617 (filed July 6, 2011) (“Applications”).

² Applications, Statement by OEM Communications, LLC.

³ *Id.*

⁴ *Id.* See 47 C.F.R. § 101.103(d)(2)(iv) (any response to notifications claiming interference must be submitted within 30 days after receipt of the notification).

⁵ Letter from Christopher R. Hardy, Vice President, Comsearch to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 9, 2011) (“Comsearch Objection”).

not up to its standards.⁶ Comsearch argues, however, that its request for additional information was justified because OEM is proposing two connected 11 GHz paths with the same frequency pair used in both directions on each path.⁷ Comsearch contends that it needs to review OEM's proposed system as a whole in order to analyze the interference potential.⁸ Comsearch also raises questions about OEM's proposed antenna and why OEM proposed channels that are normally reserved for narrowband use.⁹ In response, OEM argues that Comsearch's objection letter was untimely and did not meet the requirement in the Commission's rules that a response noting potential interference must provide technical details.¹⁰ OEM also provides a technical rebuttal to each of the points made by Comsearch.¹¹

After reviewing the Applications and the pleadings filed, Broadband Division staff returned the Applications on November 16, 2011 requesting additional information.¹² Specifically, Division staff requested details on OEM's proposed antenna pattern, including any test results.¹³ In addition, OEM was directed to provide additional details "regarding the configuration of your system to explain how the paths will operate simultaneously with both halves of the pair in both directions."¹⁴ OEM was invited to file trade secret information confidentially.¹⁵ In response, OEM provided a public response concerning simultaneous operation on both halves of the frequency pair,¹⁶ and a confidential response concerning its proposed antenna and network configuration.¹⁷

The Applications and Informal Objection raise three issues: (1) whether OEM complied with the frequency coordination requirement in Section 101.103(d) of the Commission's Rules, (2) whether the facilities proposed in OEM's Applications comply with the Commission's rules, and (3) whether OEM's proposed network configuration, as described in the Confidential Attachment, would comply with the Commission's rules. We will discuss each of these issues in turn.

In our view, neither Comsearch nor OEM handled their frequency coordination responsibilities in an appropriate manner. As Comsearch admits, its initial clearances and subsequent retraction of those clearances caused confusion and delayed consideration of the Applications. On the other hand, once Comsearch requested additional information, we do not believe it was appropriate for OEM to

⁶ *Id.* at 1.

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ Letter from Graham R. Stone, President, OEM Communications, LLC to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 18, 2011), *citing* 47 C.F.R. § 101.103(d)(2)(iv).

¹¹ Addendum to Reply Letter (filed Aug. 19, 2011).

¹² Notice of Return, Ref. No. 5256761 (Nov. 16, 2011).

¹³ *Id.* at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ OEM Reply to FCC Notice of Return (filed Jan. 11, 2012).

¹⁷ OEM Confidential Information for FCC Notice of Return (filed Jan. 13, 2012). OEM also submitted a request for confidential treatment, as required by 47 C.F.R. § 0.459. *See* Statement in Support of Request for Confidential Treatment Pursuant to Sections 0.457 and 0.459 of the Commission's Rules, OEM Communications, LLC (filed Jan. 11, 2012) (Confidential Attachment).

categorically reject Comsearch's request for additional information on the basis that it was received more than 30 days after the coordination notices were sent. The Commission's Rules require applicants and licensees to make every reasonable effort to avoid problems and conflicts.¹⁸ While OEM's coordination notices included the minimum information required by Section 101.103(d)(2)(ii) of the Commission's Rules,¹⁹ that rule only sets forth the minimum requirements for notification and does not foreclose requests for additional information. We find no basis to support OEM's accusations that Comsearch's request for information was improper. Indeed, staff determined that additional information was needed in order to evaluate the Applications. We remind OEM that it has an affirmative duty to cooperate and work with other applicants and licensees to resolve issues that come up in the frequency coordination process. In this case, we will not dismiss the Applications for failure to comply with the frequency coordination requirement because Comsearch originally cleared the proposed operations and because Comsearch was partially responsible for the problems that occurred in the frequency coordination process.

With respect to the specific operations proposed in the Applications, we find that OEM is in compliance with the Commission's rules, and we will therefore authorize processing of the Applications.²⁰ Comsearch has not identified a specific interference conflict involving OEM's proposed facilities.

After reviewing the information in the Confidential Attachment, however, we are concerned that OEM may be contemplating operations that do not comply with the Commission's rules.²¹ In order to ensure compliance, we believe it is appropriate to impose conditions on the grant of the Applications. Specifically, we will require OEM to file new applications, accompanied by evidence of frequency coordination, if it wishes to add new transmit or receive points associated with the facilities proposed in the Applications. We will also require OEM to modify its antenna or reduce its EIRP so as not to radiate, in the direction of the other licensee, an EIRP in excess of that which would be radiated by a station using a Category A antenna within 7 days of being notified of a potential interference conflict if necessary to fulfill its obligations under Section 101.115(f) of the Commission's Rules. In this case, we believe establishing a firm deadline for OEM to upgrade its antenna if necessary will facilitate coexistence with other co-channel and adjacent channel systems.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the informal objection filed by Comsearch on August 9, 2011 IS GRANTED IN PART AND DENIED IN PART.

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.41 of the Commission's Rules, 47 C.F.R. § 1.41, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by OEM Communications LLC on July 6, 2011 (File Nos. 0004792571, 0004792606, 0004792617) in accordance with this letter and the Commission's Rules.

¹⁸ See 47 C.F.R. § 101.103(d)(2)(iv).

¹⁹ 47 C.F.R. § 101.103(d)(2)(ii).

²⁰ See *Wireless Strategies, Inc., Memorandum Opinion and Order*, 22 FCC Rcd 11638, 11640 ¶ 7 (WTB BD 2007).

²¹ See Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees, *et al.*, WT Docket No. 10-153, *et al.*, *Report and Order, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 26 FCC Rcd 11614, 11639-11643 ¶¶ 59-68 (2011).

IT IS FURTHER ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.945(e) of the Commission's Rules, 47 C.F.R. § 1.945(e), that the following conditions shall be imposed on any grant of File Nos. 0004792571, 0004792606, and 0004792617:

OEM Communications LLC shall not add any transmit or receive points associated with the facilities granted under this authorization without filing applications to modify this license, accompanied with evidence of frequency coordination.

OEM Communications LLC must modify its station in accordance with 47 C.F.R. § 101.115(f), within 7 days if notified of an interference conflict. Specifically, OEM must modify its antenna or reduce its EIRP so as not to radiate, in the direction of the other licensee, an EIRP in excess of that which would be radiated by a station using a Category A antenna.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau