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June 19, 2013

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: FiberTower Spectrum Holdings LLC

Requests for Waiver, Extension of Time, or in the Alternative, Limited Waiver of Substantial Service Requirements

94 Applications Regarding 24 GHz Digital Electronic Message Service (DEMS) Licenses, ULS File Nos. 0005207557 *et seq.*

345 Applications Regarding 39 GHz Economic Area Licenses, ULS File Nos. 0005207187 *et seq.*

250 Applications Regarding 39 GHz Rectangular Service Area (RSA) Licenses, ULS File Nos. 0005207571

Dear Ms. Dortch:

The Fixed Wireless Communications Coalition, Inc. (FWCC)¹ files this statement in support of FiberTower's Petition for Reconsideration of the Commission's denial of FiberTower's request for a limited waiver of the build-out deadlines.²

¹ The FWCC is a coalition of companies, associations, and individuals interested in the fixed service—i.e., in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, fixed microwave engineering firms, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety

June 19, 2013

Page 2

We urge the Commission to consider that a grant of FiberTower's request would better serve the public interest than would rote enforcement of the deadlines. The very large number of requests from multiple licensees for additional time to build out auctioned fixed service spectrum, and the large number of licenses canceled by the Commission or turned in by the licensees, following failure to construct in accordance with the required schedule, are compelling evidence that the current renewal scheme does not work as intended. The public will receive greater benefits from the spectrum if the Commission allows FiberTower to add to its considerable successes with a further extension of time.

Enforcement of the renewal requirements will bring about precisely the result those requirements were intended to prevent. The purpose of the build-out rule is to ensure that auctioned spectrum is actually used. Denying FiberTower's waiver request will ensure the spectrum is *not* used, unless and until the Commission re-auctions it, which may not happen for many years. Moreover, when the Commission eventually does conduct an auction, the history of FiberTower and similarly situated licensees will likely deter bidding.

FiberTower has explained that its build-out problems are due in part to the failure of "equipment ecosystems" to develop sufficiently for the 24 and 39 GHz bands.³ Cancelling FiberTower's licenses will be a further disincentive to equipment vendors, setting up a death spiral that will make it still more difficult for any licensee to construct, and making further mass cancelations almost inevitable.

Even if the Commission is correct that FiberTower did not meet its standards for an extension of time⁴—although we think FiberTower has made a good case to the contrary—that should not end the inquiry. The wholesale failure of auctioned fixed service licensees to construct in accordance with the Commission's timetable strongly suggests that something may be wrong with the timetable, not with the licensees. If so, then to sanction the licensees by canceling licenses is bad policy. Until it can rethink the renewal process,

agencies, cable TV providers, backhaul providers, and/or their respective associations, communications carriers, and telecommunications attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see www.fwcc.us.

² Petition for Reconsideration of FiberTower Spectrum Holdings LLC (filed June 6, 2013). The FWCC filed previously in this matter. *See* Letter from Mitchell Lazarus, Counsel for FWCC to Marlene H. Dortch, Secretary, FCC in FiberTower Corporation, Request for Extension of Time or, in the Alternative, Limited Waiver of Substantial Service Requirement, File Nos. 0005207557 et al. (filed Sept. 10, 2012).

³ *Id.* at 5.

⁴ *FiberTower Spectrum Holdings LLC*, File Nos. 0005207557 *et seq.*, Memorandum Opinion and Order, FCC 13-67 at ¶ 23 (released May 7, 2013).

June 19, 2013

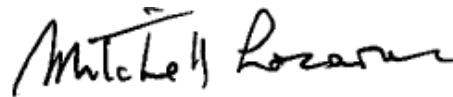
Page 3

the Commission should use the waiver process as the Court of Appeals once suggested, as a “safety valve procedure.”⁵

The Commission should grant FiberTower’s waiver request and reinstate its licenses.

Please do not hesitate to contact me with any questions.

Respectfully submitted,



Mitchell Lazarus
Counsel for the Fixed Wireless
Communications Coalition

cc: Acting Chairwoman Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
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James Schlichting, Senior Deputy Chief, Wireless Telecom. Bur.
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⁵ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).