Before the
Federal Communications Commission
Washington DC 20554

In the Matter of	)	
	)	
Fixed Wireless Communications Coalition,	)	File No. _____
Request for Declaratory Ruling to Resolve	)	
Uncertainty in the Part 101 Rules	)	

REQUEST FOR DECLARATORY RULING

Pursuant to Section 1.2 of the Commission's rules, the Fixed Wireless Communications Coalition, Inc. (FWCC)[1] files this request for a declaratory ruling.

The request arises from a decision of the Wireless Telecommunications Bureau in *Geodesic Networks, LLC*.[2] Some holdings in the *Geodesic Order* have raised questions as to the interpretation of certain Part 101 rules, particularly as to frequency coordination. We ask to have those definitively resolved.

Statement of interest. Members of the FWCC conduct frequency coordination, file applications that are subject to frequency coordination, or rely on services whose operation

---

[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 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] File Nos. 0006213843, 0006261839, 0006261845, Memorandum Opinion and Order and Order on Reconsideration, DA 14-1268 (Wireless Telecom. Bur. Sept. 3, 2014) (*Geodesic Order*).

depends on frequency coordination. The questions raised by the *Geodesic Order* bear directly on their respective activities.

The *Geodesic* case arose as a licensing dispute between two private parties. The FWCC does not take sides in the underlying dispute. We seek only a clarification of the rules, not a different outcome.[3]

A. SUMMARY

The *Geodesic Order* caused uncertainty and concern among fixed wireless interests as to the proper construction of the Commission's rules on these issues:

1. When a party requests an expedited frequency coordination, and receives no response within the requested response period, is frequency coordination then complete, or must the party obtain affirmative responses from potentially affected licensees and prior applicants?

2. Similarly, when a party modifies a PCN, do potentially affected parties have a duty to make a timely response, so that their silence connotes assent, or does the party that issued the PCN have a duty to obtain affirmative responses?

3. When a party has coordinated growth channels, and another party seeks to license those channels, which party has the burden of showing need for the channels? What are the elements of a successful showing? Is there a fixed time limit for holding growth channels?

4. What are the procedures for challenging an application as having been improperly filed, both before and after grant of the license?

We respectfully ask the Commission to clarify these points.

B. BACKGROUND: HOW FREQUENCY COORDINATION WORKS

The Commission's Part 101 rules provide access to spectrum on a first come, first served, interference-free basis.[4] The purpose of frequency coordination is to ensure that each new fixed service link is compatible with all of those that preceded it.

---

[3] Neither of the parties to the *Geodesic* case belong to the FWCC. Both of the frequency coordinators named in the decision are members.

Part 101 frequency coordinators have no special authorization from the FCC. Would-be license applicants can perform frequency coordination themselves, or can hire a frequency coordinator to act on their behalf. Most users find it efficient and economical to engage the services of specialized firms having the needed databases, software, and expertise for frequency coordination—as did both of the parties in *Geodesic*.

Once a link is designed, the frequency coordinator sends a "prior coordination notice" (PCN) to operators and prior applicants that might be affected. In the ordinary course, the recipients then have 30 days to report potential interference. A recipient who does not respond within that time is considered to have waived any objections.

The parties are expected to make every reasonable effort among themselves to eliminate interference issues. If needed, for example, a frequency coordinator may advise a customer to upgrade its proposed antenna to one having a more directional pattern, or perhaps to offer to upgrade the antenna of another licensee predicted to receive interference. The customer may opt to reduce its transmitter power, change frequency band, change polarization, apply Automatic Transmitter Power Control and/or adaptive modulation, or accept a specified degree of incoming interference. In more extreme situations, an intermediate repeater may be needed to change the geometry of a proposed link. The overall frequency coordination process is dynamic and iterative.

The rules permit a party issuing a PCN ("notifying party") to request an "expedited prior coordination period" of less than 30 days.[5] That occurred in the *Geodesic* case and triggered some of the issues discussed below.

---

[4] This discussion does not apply to auctioned spectrum.

[5] 47 C.F.R. § 101.103(d)(2)(vi).

C. BACKGROUND: FACTUAL SEQUENCE

The *Geodesic* case entailed the following sequence of events.[6] Day zero is March 4, 2014; day counts are calendar days.

Day 0: Geodesic circulated a PCN and asked for an expedited response within 15 days

Day 16: Geodesic issued a PCN on the same link to make minor modifications

Day 22: Auburn Data objected to the Geodesic PCN on the ground of Auburn Data's having circulated (and repeatedly renewed) a conflicting PCN 30 months earlier

Day 22 (same day): Geodesic filed its application

Day 27: Geodesic stated a need for the frequencies and asked Auburn Data to release them

Day 29: Geodesic's application appeared on public notice

Day 56: the Commission granted Geodesic's application

Day 56 (same day): Auburn Data filed applications for the paths for which it previously issued PCNs

Day 59: Auburn Data filed a petition against Geodesic's application and license

Day 64: Auburn Data's applications appeared on public notice

Day 78: Geodesic filed a petition against Auburn Data's applications.

---

6 *See generally Geodesic Order* at ¶¶ 4-8.

D. RESPONSIBILITIES OF THE PARTIES IN AN EXPEDITED COORDINATION

The case raises a question on which, so far as we can tell, the Commission has not previously ruled: If a notifying party requests an expedited coordination, and receives no response within the requested time period, is frequency coordination then complete (as Geodesic contended), or must the notifying party have affirmative consents from those who received the PCNs (as Auburn Data contended)?

Here, after Geodesic requested responses within 15 days, Auburn Data objected on Day 22, the same day that Geodesic filed its application. The application stated that frequency coordination was complete, in apparent reliance on Auburn Data's silence during the requested response period. The Bureau held the application to have been properly filed.[7]

Two Commission rules arguably apply, with conflicting results.

Auburn Data pointed to Section 101.103(d)(2)(vi) on expedited coordinations:[8]

> It is the responsibility of the notifying party to receive written concurrence (or verbal, with written to follow) from affected parties or their coordination representatives.

The Bureau, however, ruled that Geodesic's frequency coordination was complete without an affirmative written response from Auburn Data, relying instead on Section 101.103(d)(2)(iv):[9]

> Response to notification should be made as quickly as possible, even if no technical problems are anticipated. ... Every reasonable effort should be made by all applicants, permittees and licensees to eliminate all problems and conflicts.

---

7 *Geodesic Order* at ¶ 14.

8 *Geodesic Order* at ¶ 13.

9 *Id.*

However, paragraph (iv), which appears to only address the full 30-day notification period, and not expedited requests, provides:

> If no response to notification is received within 30 days, the applicant will be deemed to have made reasonable efforts to coordinate and may file its application without a response[.][10]

This "silence means assent" language is missing from paragraph (vi) on expedited coordination. In other words, one rule requires affirmative written responses, the other does not, but the two paragraphs appear to govern differing situations. Applying both to expedited coordination requests leads to confusion and conflicting results.[11]

We respect the Bureau's expertise in administering the Part 101 regulatory regime, and acknowledge that its interpretation of the rules is entitled to deference. We recognize also that in some situations it may be more difficult for the notifying party to contact all of the PCN recipients to obtain affirmative responses or written concurrence.

The FWCC does not favor one reading of the rules over another. But we do need to know which view to adopt going forward, and ask the Commission to announce a definitive reading one way or the other so coordinating parties can be certain of their respective responsibilities.

If the Commission clarifies that the notifying party in an expedited coordination can rely on others' silence as consent, then we have a further question: is there a minimum time period to be specified in a request? Except for emergency restorations, we rarely see requests shorter than 15 days. In theory, though, an unscrupulous operator could request responses within, say, 24

---

[10] 47 C.F.R. § 101.103(d)(2)(iv).

[11] A familiar principle for resolving conflicting rules favors the specific over the general. *E.g.*, *Long Island Care at Home, Ltd. V. Coke*, 551 U.S. 158, 170 (2007) ("normally the specific governs the general") (construing contradictory Department of Labor regulations). This would appear to support application of the specific requirement in paragraph (vi) for written concurrence in the case of an expedited coordination, and apply the "silence means assent" requirement of paragraph (iv) for only non-expedited 30-day notification period requests.

hours and receiving none, file its application the next day. Especially if there is no way for an objecting party to challenge a filed application (see Part G below), such a practice would be difficult to control.

E. RESPONSIBILITIES OF THE PARTIES AS TO A MODIFIED PCN

A separate question on the allocation of responsibilities arises in the case of a modification to a PCN. May the party that modified the PCN rely on others' silence as signifying consent to the modification, or must that party obtain individual responses from potentially affected licensees and prior applicants?

F. LIMITS ON HOLDING GROWTH CHANNELS

The rules permit a party to coordinate a frequency that is not for immediate use, as part of plans for future expansion of a system. These are called "growth channels." When planning a large system, the operator may not wish to commence any construction unless it can be certain that growth channels will be available when needed. Typically an operator that coordinates a growth channel will continue renewing the PCN at six-month intervals until it is ready to file the application. Although the filing of an application locks in the channel and eliminates the periodic renewals, a prudent operator will not file much before the channel is actually needed, as grant of the license starts an 18-month clock for the completion of construction,[12] and also a 30-month clock for loading the channel.[13]

The frequency at issue here was a growth channel that Auburn Data had first coordinated some 30 months earlier. Five days after Auburn Data objected to Geodesic's PCN on the ground

---

12 47 C.F.R. § 101.63(a).

13 47 C.F.R. § 101.141(a)(3)(ii).

of that prior coordination, Geodesic requested that Auburn relinquish the frequency pursuant to Section 101.103(d)(2)(xii), which states:

> Any frequency reserved by a licensee for future use in the bands subject to this part must be released for use by another licensee, permittee or applicant upon a showing by the latter that it requires an additional frequency and cannot coordinate one that is not reserved for future use.[14]

The Bureau held that Geodesic had properly filed its application over Auburn Data's preexisting PCN, based on two findings: the 30 months during which Auburn Data had renewed the frequency coordinations was a longer time period than the Commission contemplates for growth channels; and Geodesic's filing of its application in itself constituted a showing of need.[15]

On the former issue, the Bureau points to a Commission order that states:

> [A]ny party needing to hold growth channels for longer than six months must demonstrate a need for them in the event that another entity is unable to clear another channel."[16]

This statement, however, appears to be inconsistent with the text of the rules in two respects. The rules do not specify a six-month limit (or any time limit) on growth channels; and the statement puts the burden of a showing on the party holding the growth channel, whereas Section 101.103(d)(2)(xii), quoted above, plainly puts it on the incoming user. Moreover, the *Geodesic Order* appears to suggest the filing of an application by itself constitutes a sufficient

---

14 47 C.F.R. § 101.103(d)(2)(xii).

15 *Geodesic Order* at ¶¶ 16-17.

16 *Id.* at ¶ 17, *citing A New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, Report and Order, 11 FCC Rcd 13449 at ¶ 66 (1996).

showing by the incoming party[17] (if a showing is needed) and, by implication, overrules any possible showing by the party holding the growth channel.

Disputes over growth channels used to be rare because an incoming operator could usually coordinate around them. Due to congestion on certain routes, these disputes may become more common in the future. For that reason the industry needs clear guidelines on how the rules are meant to work: clarification on the time limits for holding growth channels, the allocation of the burden for showing a contested channel is needed, and the necessary elements of such a showing. The requested clarification should specifically address: how an incoming user may demonstrate need for a growth channel other than by filing an application;[18] how a party can preserve its reservation of channels for future growth once a subsequent PCN has been received; and a maximum acceptable duration for preserving growth channels.

G. CHALLENGES TO AN APPLICATION

The *Geodesic Order* arose from a "Petition for Reconsideration and Contingent Petition to Deny" filed by Auburn Data.

The Bureau held that Auburn Data had no right to file either a petition to deny or a petition for reconsideration against Geodesic's application.[19]

The Commission has established by rulemaking that it no longer must provide public notice of applications (although it continues to do so), but it has not established with equal clarity that petitions to deny are improper. Some of the authorities that the Bureau cites for that position

---

[17] *Geodesic Order* at ¶ 16 ("We interpret the filing of Geodesic's application for a frequency as a demonstration of its need.")

[18] Ordinarily an incoming user could not properly file an application during an unresolved coordination dispute involving another party's preexisting PCN.

[19] *Geodesic Order* at ¶ 11.

hold only that the Commission need not provide public notice, with no reference to petitions to deny.[20] One says the "informational" public notices the Commission continues to release do not confer a right to file petitions to deny[21]—but that same order also suggests a continuing right to oppose applications.[22] The Bureau's only direct support is an earlier Bureau order that indeed asserts there is no right to a petition to deny[23]—but rests this holding on Section 1.933(d), which again speaks only to public notice.

None of the authorities cited in the *Geodesic Order* supports the Bureau's refusal to consider petitions for reconsideration. One seems to say the opposite: that the Commission *will* accept petitions for reconsideration.[24] Moreover, the broad language of the rule on petitions for reconsideration would seem to have allowed Auburn Data's filing.[25]

---

20 *Geodesic Order* at ¶ 11 *citing* Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56; *A New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, Report and Order, 11 FCC Rcd 13449 at ¶ 82 (1996).

21 *A New Part 101 Governing Terrestrial Microwave Fixed Radio Services*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 15 FCC Rcd 3129 at ¶ 16 (2000).

22 "We believe that eliminating the thirty-day public notice period for private fixed point-to-point microwave service applications changed neither the substantive standards under which we evaluate those applications *nor removed the right to oppose those applications*." *Id.* at ¶ 15 (emphasis added). In fairness, however, this passage may refer to the filing of post-grant challenges, rather than pre-grant petitions to deny.

23 *Touch Tel Corporation*, Order on Reconsideration, 26 FCC Rcd 16482 at ¶ 8 (Wireless Telecom. Bur. 2011).

24 "Entities will still have an opportunity to protest following the public notice announcing the Commission's action on the applications." *A New Part 101 Governing Terrestrial Microwave Fixed Radio Services, supra*, 15 FCC Rcd 3129 at ¶ 15.

25 "Subject to the limitations set forth in paragraph (b)(2) of this section [inapplicable here], any party to the proceeding, or any other person whose interests are adversely affected by any action taken by the Commission or by the designated authority, may file a petition requesting reconsideration of the action taken." 47 C.F.R. § 1.106(b)(1).

The industry needs a mechanism by which to challenge an application that may have been improperly filed. If the Commission were to grant all applications in the ordinary course, without allowing either petitions to deny before the fact or petitions for reconsideration afterward, then an unscrupulous applicant could do a lot of damage to the orderly administration of the spectrum.

The Bureau noted that it treated the Auburn Data pleading as an informal objection.[26] If the Commission were now to affirm that it will indeed receive and consider informal objections before grant of the license, and petitions for reconsideration afterward, that would go a long way toward meeting the industry's needs in this regard.

CONCLUSION

We ask the Commission to clarify Part 101 rules and procedures as set out above.

Respectfully submitted,

Mitchell Lazarus
Cheng-yi Liu
FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street, 11th Floor
Arlington, VA 22209
703-812-0400
Counsel for the Fixed Wireless
Communications Coalition

October 23, 2014

26 *Geodesic Order* at ¶ 11 n.35.

COURTESY SERVICE LIST

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Ajit V. Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Michael O'Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Roger C. Sherman, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

James Schlichting, Senior Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

John S. Leibovitz, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tom Peters, Chief Engineer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Blaise Scinto, Chief
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

John Schauble, Deputy Chief
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Stephen Buenzow, Deputy Chief
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
1280 Fairfield Road
Gettysburg, PA 17325

Auburn Data Systems, LLC
Daniel B. Mannisto
150 North Michigan Avenue, Suite 2800
Chicago, IL 60601

Geodesic Networks LLC
27 North Wacker Drive, Unit 567
Chicago, IL 60606-2800
ATTN John P. Madigan