



May 15, 2017

Ex Parte Notice

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**Re: Higher Ground LLC, Application for Blanket Earth Station License,
IBFS File No. SES-LIC-20150616-00357, Call Sign: E150095**

Dear Chairman Pai:

NTCA–The Rural Broadband Association (“NTCA”),¹ together with NRTC² and the Rural Wireless Association (“RWA”)³ hereby submit this *ex parte* letter in support of the Applications for Review of the Order and Authorization granted in the above-referenced docket.⁴ The Petitioners seek review of

¹ NTCA represents more than 800 independent, community-based rural rate-of-return regulated telecommunications providers (“RLECs”). All NTCA members are full service local exchange carriers and broadband providers, and many of its members provide wireless, cable, satellite, long distance and other competitive services to their communities.

² NRTC provides solutions that help its 1,500 electric and telephone members bring the advantages of today’s evolving technology to rural America. NRTC’s solutions include integrated smart grid and utility solutions, advanced energy, broadband infrastructure and managed network services, wireless technologies and programming distribution capabilities for video and broadband providers.

³ RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies that serve rural consumers and those consumers traveling in rural America. RWA’s members are comprised of both independent wireless carriers and wireless carriers that are affiliated with rural telephone companies, and each serves fewer than 100,000 subscribers.

⁴ Applications for Review in the Matter of Higher Ground LLC, Application for a Blanket License to Operate C-band Mobile Earth Terminals, File No. SES-LIC-20150616-00357 filed separately by Fixed Wireless Communications Coalition (Feb. 10, 2017), Enterprise Wireless Alliance (Feb 17, 2017) and the Utilities Technology Council (“UTC”) (Feb 17, 2017) (collectively “Petitioners”). Fixed Wireless Communications Coalition simultaneously requested a stay of the Order and Authorization, *see*, Fixed Wireless Communications Coalition Motion for Stay in the Matter of Higher Ground LLC, Application for a Blanket License to

an Order and Authorization released jointly by the Federal Communications Commission's (the "Commission's") International Bureau, the Office of Engineering and Technology, and the Wireless Telecommunications Bureau that authorizes Higher Ground LLC to deploy up to 50,000 mobile satellite earth stations transmitting in the 5925-6425 MHz band ("6 GHz band") ("Order"). The Order waives rules that normally require prior coordination of operations to protect against interference and that prohibit mobile operations in the band. NTCA agrees with Petitioners that there was an insufficient record and basis for waiving the rules, and that the waiver therefore poses serious potential risk to "mission critical" communications systems. NTCA urges the Commission to set aside the authorization and waiver. Alternatively, it should set aside the Order and initiate a rulemaking that provides parties the opportunity to fully consider and comment on the panoply of issues raised in this proceeding.

By way of background, thousands of fixed service (FS) microwave systems currently use the 6 GHz band. As demonstrated in the comments filed in this proceeding,⁵ many of these are "mission critical" communications systems. Point-to-point links in the 6 GHz band today carry backhaul traffic on cellular voice and land mobile and data systems, including traffic traveling on 911 circuits. The frequencies are also used for remote control of railroad switches and signals, pipeline valves and utility circuit breakers; interconnecting mobile radio base stations used for dispatching vehicles (first responders, locomotives, emergency repair crews, etc.). Interference with such operations would directly affect critical communications and thus "directly threaten the safety of life and property, and essential economic activity."⁶

Nevertheless, the Order concludes that the Higher Ground proposal would prevent or minimize the risk of harmful interference to FS operations in the 6 GHz band. However, Petitioners rightly point out that Higher Ground provided only conclusory statements about its system, and that while the Technical Appendix filed with its application lays out performance criteria for the system, that appendix does not actually describe how it will meet the criteria.⁷ Goals are nice and promises can be reassuring, but when it comes to mission critical communications systems, real assurances and proof are needed. Indeed, no real-world test data was submitted in the record to show that Higher Ground's system can and will work as designed. As petitioners explain, the record is therefore woefully inadequate to support a conclusion that Higher Ground's own system can and will protect FS from harmful interference.⁸ To make matters worse, the Order expressly declines to require Higher Ground to accept liability for any reported interference, and requires it to correct interference only after it occurs, rather than taking care to prevent it at the outset notwithstanding the potentially devastating impacts of such interference. The approval here therefore stands in stark contrast to and represents a substantial deviation from existing Commission policies regarding certification of

Operate C-band Mobile Earth Terminals, File No. SES-LIC-20150616-00357 (filed Feb. 10, 2017).

⁵ See, e.g., *ex parte* statement of CenturyLink (filed March 4, 2016), *ex parte* statement of Association of American Railroads (filed Dec. 22, 2016), *ex parte* statement of Utilities Technology Council (filed Sept. 5, 2016); Comments of Nebraska Public Power District (Sept. 2, 2016), Opposition of Southern Company Services, Inc. (Sept. 30, 2016), Petition to Deny of the Cities of Garland, Mesquite, Rowlette & Sachse, Texas (Nov. 17, 2016); *ex parte* statement of Cellular Network Partnership d/b/a Pioneer Cellular (filed Oct. 27, 2016).

⁶ Application for Review of the Fixed Wireless Communications Coalition, p. 13.

⁷ *Id.* p. 6.

⁸ See, Application for Review of the Fixed Wireless Communications Coalition, p. 2

frequency coordinators and the usual requirement of authorization of databases that are used to control communications systems in other bands.

The Commission may grant a rule waiver only when the waiver will “not undermine the policy, served by the rule, that has been adjudged in the public interest.”⁹ The allocation and frequency coordination rules that were waived for Higher Ground serve to protect other users from interference. As noted above, the record is replete with discussion of the shortcomings and limitations of the interference avoidance technology that Higher Ground proposed. Rather than address the legitimate interference concerns, the Order instead accepts at face value unsupported assertions that Higher Ground’s unique and unproven system will mitigate interference to critical FS operations.

The Order is not a minor waiver of the rules based on unique circumstances or an undue burden. Instead, it represents a fundamental departure from settled rules that govern all users in the 6 GHz band. As the Application for Review noted, the Order “effectively reallocated the 6 GHz band for mobile services and it has established a new licensing framework in the band based upon spectrum sharing.”¹⁰ Although the Commission has latitude to choose whether it will proceed by adjudication or by rulemaking in deciding policy, issues of general applicability are more suited to rulemaking than adjudication.¹¹ In addition, in “matters where granting a waiver request would have a significant effect on the nature of the spectrum band, the Commission has stated that it is reluctant to grant waiver requests that effectively circumvent the Commission’s rulemaking function.”¹² The granted waiver here effected a rule change more appropriately decided via a rulemaking that provided public notice and the opportunity for the public to comment.¹³

Given the potential for interference to critical communications, the lack of sufficient data to support the Order and the far-reaching consequences of that action, NTCA supports the requests that the Commission revoke Higher Ground’s waiver and rescind the authorization. In the alternative, the Commission should set aside the waiver and open a rulemaking to fully evaluate Higher Ground’s proposal and its impact on incumbent users of the spectrum.

⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir 1969). *See also*, 47 U. S.C. § 309, 47 C.F.R. § 1.925.

¹⁰ Application for Review of UTC, p. 18.

¹¹ *See SEC v. Chenery Corp*, 332 U.S. 194, 203(1947) and *Telocator Network of America v. FCC* 691 F.2d 525, 551 (D.C. Cir 1982).

¹² Application for Review of UTC, p. 18, *citing*, Applications for License and Authority to Operate in the 2155-2175 MHz Band, WT Docket No. 07-16, *Order* 22 FCC Rcd 16563 (200&), and Spectrum Networks Group, LLC, WT Docket No. 14-100, *Order*, 30 FCC Rcd 3509(2015).

¹³ The only public notice of the waiver request was contained on a weekly listing of actions on satellite applications.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS.

Sincerely,

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