

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

In the Matter of)	
)	
Applications of Horizon Wi-Com, LLC)	File Nos. 0003014435, 0003014449,
)	0003014463, 0003014470, 0003045272,
)	0003045277, 0003045282, and 0003067727

MEMORANDUM OPINION AND ORDER

Adopted: January 15, 2009

Released: January 16, 2009

By the Chief, Mobility Division:

I. INTRODUCTION

1. For the reasons stated below, the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) hereby dismisses in part and denies in part the Petition for Reconsideration or Rescission (Petition) filed on August 14, 2007, by Green Flag Wireless, LLC and James F. McCotter (collectively, Green Flag).¹ Specifically, we dismiss as untimely Green Flag's challenge to four of the above-referenced substantial service performance showings of Horizon Wi-Com, LLC (Horizon) for its 2.3 GHz Wireless Communications Service (WCS) licenses, and deny Green Flag's request that we reconsider or rescind our acceptance of Horizon's four remaining showings.

II. BACKGROUND

2. Section 27.14(a) of the Commission's rules requires 2.3 GHz WCS licenses to "make a showing of 'substantial service' in their license area within the prescribed license term set forth in § 27.13."² Section 27.14(a) defines substantial service "as service which is sound, favorable and substantially above a level of mediocre service which just might minimally warrant renewal."³ The rule provides that "[f]ailure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it."⁴ Section 27.13(a) provides that "[i]nitial WCS authorizations for the 2305-2320 MHz and 2345-2360 MHz bands will have a term not to exceed ten years from the date of original issuance or renewal."⁵

3. On May 2, 2007, Horizon filed performance showings for Buffalo (MEA 003, file no. 0003014435), Philadelphia (MEA 004, file no. 0003014449), Pittsburgh (MEA 012, file no. 0003014463),

¹ Petition for Reconsideration or Rescission filed on August 14, 2007, by Green Flag Wireless, LLC and James F. McCotter.

² 47 C.F.R. § 27.14(a). We note that in December 2006, the Wireless Telecommunications Bureau granted a three-year extension of the construction deadline for certain WCS licensees. *See Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses, Order*, 21 FCC Rcd 14134 (WTB 2006).

³ 47 C.F.R. § 27.14(a).

⁴ *Id.*

⁵ 47 C.F.R. § 27.13(a). Horizon's licenses were granted on July 21, 1997, and it filed each of the above-referenced performance showings before the end of the initial 10-year license term (July 21, 2007).

and Cincinnati-Dayton (MEA 013, file no. 0003014470), which the Division accepted on May 16, 2007. On June 12, 2007, Horizon filed performance showings for Boston (MEA 001, file no. 0003045272), New York City (MEA 002, file no. 0003045277), Washington, D.C. (MEA 005, file no. 0003045282) and Richmond (MEA 006, file no. 0003067727), which the Division accepted on July 16, 2007.

4. On August 14, 2007, Green Flag filed its Petition seeking reconsideration or rescission of the Division's acceptance of Horizon's substantial service showings. Green Flag argues that: 1) Horizon overstates its coverage area in its substantial service showings; 2) Horizon's propagation model is flawed; 3) Horizon does not have adequate capacity or number of base stations to serve the population covered; and 4) its field measurements confirm that Horizon's coverage is overstated. On August 28, 2007, Horizon filed an Opposition, arguing that Green Flag's Petition is both procedurally and substantively defective; is based on a serious misconception of the nature of Horizon's system and, accordingly, the Division's acceptance of the showings was proper. Green Flag filed a Reply and an Addendum to Reply on September 6 and 20, 2007, respectively, wherein it addresses Horizon's procedural challenge and provides technical arguments concerning the adequacy of Horizon's system.⁶

III. DISCUSSION

A. Procedural Issues

5. Green Flag asserts that there is "no deadline" by which it must have filed its petition for reconsideration.⁷ We disagree and find that the Petition is untimely with respect to four of Horizon's performance showings. Section 405(a) of the Communications Act of 1934, as amended (Act), and Section 1.106(f) of the Commission's rules, require interested parties to file a petition for reconsideration within 30 days from the date of public notice of the Commission's action.⁸ The Commission has consistently held that, absent extraordinary circumstances, it is without authority to extend or waive the statutory 30-day filing period for petitions for reconsideration specified in Section 405(a) of the Act and Section 1.106(f) of its rules. Indeed, the requirement applies even if a petition for reconsideration is filed one day late.⁹

6. We determine the date of public notice of the Commission action under Section 1.4 of the Commission's rules.¹⁰ Where an action is not published in the Federal Register, released, or placed on formal public notice, Section 1.4(b)(5) provides that the date of public notice is the date of the Commission action.¹¹ The date of public notice regarding Horizon's performance showings for Buffalo, Philadelphia, Pittsburgh and Cincinnati-Dayton¹² was May 16, 2007, the date the Commission accepted these showings.¹³ Petitions for reconsideration were thus due June 15, 2007. Green Flag filed its Petition on August 14, 2007, two months after the filing deadline and we therefore dismiss the Petition as untimely regarding Horizon's showings for these markets. Even if we were to reach the merits of Green Flag's request for reconsideration or rescission regarding these four markets, we would deny its request for the same reasons discussed below for Horizon's showings for Boston, New York City, Washington, D.C.,

⁶ Horizon also filed a Supplement to Opposition on September 28, 2007.

⁷ See Reply to Opposition at 3.

⁸ 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

⁹ See, e.g., In the Matter of Memorandum of Agreement Between the Federal Communications Commission and Elkins Institute, Inc., *Order on Reconsideration*, 14 FCC Rcd 5080, 5081 ¶ 3 (WTB 1999); Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975).

¹⁰ 47 C.F.R. § 1.4.

¹¹ 47 C.F.R. § 1.4(b)(5).

¹² See file nos. 0003014435; 0003014449; 0003014463; and 0003014470, respectively.

¹³ 47 C.F.R. § 1.4(b)(5). See also Opposition at 4.

and Richmond.¹⁴

B. Substantive Issues

7. As explained below, based on our review of the record in this proceeding, we find that Green Flag has presented an insufficient basis for the Division to reconsider or rescind the acceptance of Horizon's substantial service showings for Boston, New York City, Washington, D.C., and Richmond.¹⁵

8. *System Coverage.* Although Green Flag argues throughout its Petition that Horizon overstates its coverage in its substantial service showings, the record reflects that virtually all of Green Flag's arguments regarding Horizon's coverage are predicated on its misconception that Horizon deployed a mobile WiMax system. For example, in its Petition, Green Flag relies on a trade press article recounting certain observations made by Horizon's President about the potential coverage of a mobile WiMax system.¹⁶ Horizon indicates that it has deployed a point-to-multipoint system, however, not a mobile WiMax system as Green Flag mistakenly assumes.¹⁷ In addition, Green Flag argues that the signal level of -116 dBm used by Horizon to predict coverage overestimates coverage because it is too low for a mobile system.¹⁸ Green Flag claims that "a signal strength level of -106 dBm is generally deemed to be the lowest acceptable threshold for reliable service," but provides no authority for its claim.¹⁹ In response, Horizon provides documentation from its vendor, Navini Networks, reflecting that the equipment is capable of operating at -122.5 dBm,²⁰ and notes that its showing actually relies on a more conservative -116 dBm level to depict coverage.²¹ Green Flag concedes that "placing fixed antennas outdoor on roof tops would greatly expand [the] potential coverage"²² of Horizon's system, but argues that such equipment cannot be deployed. Horizon demonstrates in the record, however, that connectors are available for deploying high-gain rooftop antennas.²³ We find that Horizon has adequately rebutted Green Flag's assertions with supporting documentation from the relevant equipment provider, and we do not believe that Green Flag has adequately supported its request for reconsideration, particularly given its apparent misunderstanding of Horizon's system.

9. *Horizon Propagation Study.* As discussed above, we do not find persuasive Green Flag's argument regarding the alleged flaws in Horizon's technical showing, which appear to be based on a misconception that Horizon's system provides mobile service. For example, Green Flag asserts that the propagation study Horizon relies upon does not use terrain or clutter information necessary to accurately depict dense urban operation.²⁴ Horizon responds that the program accurately accounts for the

¹⁴ In fact, we note that Green Flag provides substantially less support for its contention that reconsideration or rescission is warranted for Buffalo, Philadelphia, Pittsburgh and Cincinnati-Dayton; rather, Green Flag simply extrapolates from its technical arguments regarding Horizon's deployment in New York City, Boston, and Washington, D.C.

¹⁵ See file nos. 0003045272; 0003045277; 0003045282; and 0003067727, respectively.

¹⁶ Petition at 2 (citing W. David Gardner, "Mobile WiMax Commercial Launch Planned for Northeast Region in August," Information Week June 29, 2007)

¹⁷ Opposition at 6; Supplement to Opposition at 4.

¹⁸ Petition at 3.

¹⁹ *Id.*

²⁰ See "Navini Networks Statement" at 2, Exhibit II to Opposition.

²¹ Opposition at 7.

²² Reply at 4.

²³ "Navini, How broadband . . . gets personal," Attachment to Reply to Opposition at 2. See also Supplement to Opposition at 4.

²⁴ Petition at 3.

propagation effects of terrain and clutter and states that “the fact that the coverage is larger than Petitioners’ expectations is the result of [Petitioners] erroneous expectations ... of a mobile system serving cellular handsets deep in a building, not because of incorrect use of a propagation model.”²⁵

10. *System Capacity.* We disagree with Green Flag’s unsupported assertion that Horizon’s performance showing for New York (MEA 002) is flawed because the company has not deployed a system capable of serving “millions and millions of people,” which Green Flag speculates would require “at least several hundred base stations.”²⁶ We concur with Horizon that the Commission’s performance rules do not require the system capacity envisioned by Green Flag, and also find that our rules do not require the actual provision of service to each and every person within the contour of the signal.²⁷

11. *Field Measurements.* We find that Green Flag did not provide sufficient information for us to determine the validity of its purported field measurement studies for Boston, New York City and Washington, D.C. Specifically, Green Flag failed to provide basic details of its “screen shot” measurements, including the date, time, and location of each measurement, or the type of equipment used. While Green Flag’s studies purport to demonstrate that Horizon’s system generates signals in Boston, New York City, and Washington, D.C. that are detectable at the transmitter site but that are undetectable above the noise floor at a distance of 2 miles from each respective transmitter,²⁸ we must reject Green Flag’s measurement studies as not properly supported.

12. In view of the foregoing, we find no basis to revisit the acceptance of Horizon’s performance showings for Boston, New York City, Washington, D.C., and Richmond, and therefore deny Horizon’s Petition with respect to these markets.

IV. ORDERING CLAUSES

13. ACCORDINGLY, IT IS ORDERED THAT, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.4 and 1.106, of the Commission’s rules, 47 C.F.R. §§ 1.4, 1.106, the Petition for Reconsideration or Rescission filed on August 14, 2007, by Green Flag Wireless, LLC and James F. McCotter, IS DISMISSED as untimely for application file nos. 0003014435 (MEA 003, Buffalo), 0003014449 (MEA 004, Philadelphia), 0003014463 (MEA 012, Pittsburgh), and 0003014470 (MEA 013, Cincinnati-Dayton).

14. IT IS FURTHER ORDERED THAT, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.106, of the Commission’s rules, 47 C.F.R. § 1.106, the Petition for Reconsideration or Rescission filed on August 14, 2007, by Green Flag Wireless, LLC and James F. McCotter, IS DENIED for application file nos. 0003045272 (MEA 001, Boston), 0003045277 (MEA 002, New York City), 0003045282 (MEA 005, Washington, D.C.), and 0003067727 (MEA 006, Richmond).

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel, Chief
Mobility Division
Wireless Telecommunications Bureau

²⁵ Opposition at 6.

²⁶ Petition at 3.

²⁷ Opposition at 7.

²⁸ Petition at 4.