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

In the Matter of	)	
	)	
FIBERTOWER SPECTRUM HOLDINGS LLC	)	
	)	
Requests for Waiver, Extension of Time, or in the alternative, Limited Waiver of Substantial Service Requirements	)	
	)	
94 Applications for Extension of Time to Construct 24 GHz Digital Electronic Message Service (DEMS) Licenses	)	File Nos. 0005207557 *et seq*.
345 Applications for Extension of Time to Construct 39 GHz Economic Area (EA) Licenses	)	File Nos. 0005207187 *et seq*.
250 Applications for Extension of Time to Construct 39 GHz Rectangular Service Area (RSA) Licenses	)	File Nos. 0005207571 *et seq*.
28 Construction Notifications for 24 GHz DEMS Licenses	)	File Nos. 0005244308 *et seq*.
3 Construction Notifications for 39 GHz RSA Licenses	)	File Nos. 0005245527 *et seq*.
11 Construction Notifications for 39 GHz Economic Area (EA) Licenses	)	File Nos. 0005245533 *et seq*.
FIBERTOWER SPECTRUM HOLDINGS LLC, DEBTOR-IN-POSSESSION	)	
Notifications of Completion of Construction for 24 GHz Digital Electronic Message Service (DEMS) Licenses WMT336, WMT348, and WPNG641	)	File Nos. 0005244173, 0005244224, and 0005242330
Applications for Extension of Time to Construct 24 GHz DEMS Licenses WMT336, WMT348, and WPNG641	)	File Nos. 0005207604, 0005207611, and 0005207826

ORDER ON RECONSIDERATION

Adopted: June 29, 2018 **Released: July 2, 2018**

By the Commission:

I. INTRODUCTION

1. In this *Order on Reconsideration*, we dismiss, and in the alternative, deny the request of the Competitive Carriers Association (CCA) to find that the Wireless Telecommunications Bureau (Bureau) erred when it granted FiberTower Spectrum Holdings LLC (FiberTower) a limited waiver of the June 1, 2012 substantial service deadline applicable to the Reinstated 39 GHz licenses.[1]

II. BACKGROUND

2. On May 14, 2012, FiberTower filed, under Section 1.946(e) of the Commission's rules, 699 applications seeking a three-year extension of time until June 1, 2015, to construct 346 of its 39 GHz Economic Area licenses, 251 of its 39 GHz Rectangular Service Area licenses, and all of its 24 GHz Digital Electronic Messaging Service licenses.[2] In the alternative, FiberTower sought a "limited waiver" of Sections 101.17 and 101.527 of the Commission's rules, as another means of extending the construction deadline applicable to the licenses until June 1, 2015.[3]

3. Applications for extension of time to construct facilities are not required to be placed on public notice as accepted for filing and are not subject to petitions to deny.[4] Nonetheless, parties that object to the grant of a construction extension may file an informal objection against the extension application at any time before the Bureau acts on the application.[5] No party filed an objection to FiberTower's requests.

4. On November 7, 2012, the Bureau released the *FiberTower MO&O*, in which it held that FiberTower had not demonstrated that it provided substantial service for 689 of its licenses (94 licenses in the 24 GHz service and 595 licenses in the 39 GHz service), and it denied FiberTower's request for an extension of time to construct those licenses, as well as FiberTower's alternative request for waiver.[6] On December 7, 2012, FiberTower filed an Application for Review seeking reversal of the Bureau decision.[7]

5. In the *FiberTower AFR Order*,[8] the Commission denied the Application for Review and affirmed the Bureau's determinations that FiberTower's failure to construct was caused by factors within its control and that FiberTower had not justified a waiver of the substantial service requirements.[9] The Commission also found that the Bureau had correctly rejected FiberTower's attempts to demonstrate substantial service based on "antecedent activities" such as investing capital in developing systems.[10]

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[1] *See FiberTower Spectrum Holdings, LLC*, Order on Remand and Memorandum Opinion and Order, 33 FCC Rcd 253 (WTB BD 2018) (*Order on Remand*).

[2] A list of the file numbers of the relevant applications is contained in the Appendix to the *FiberTower MO&O*. *See* FiberTower Spectrum Holdings LLC, *Memorandum Opinion and Order*, 27 FCC Rcd 13562 (WTB 2012) (*FiberTower MO&O*).

[3] Request for Extension of Time or, in the Alternative, Limited Waiver of Substantial Service Requirement (dated Apr. 30, 2012, filed May 14, 2012) ("Extension and Waiver Request") at 1.

[4] 47 U.S.C. §§ 309(b), (c)(2)(D), (d)(1), 47 CFR § 1.933(d)(5).

[5] 47 CFR § 1.41.

[6] *See FiberTower MO&O*, 27 FCC Rcd at 13568-77, paras. 19-38.

[7] Application for Review, FiberTower Corporation (filed Dec. 7, 2012).

[8] *See FiberTower Spectrum Holdings, LLC*, Memorandum Opinion and Order, 28 FCC Rcd 6822, 6822-30, paras. 2-15 (2013) (*FiberTower AFR Order*). A full recitation of the background concerning FiberTower and its licenses is contained in the *FiberTower AFR Order*.

[9] *FiberTower AFR Order*, 28 FCC Rcd at 6837-40, paras. 29, 34-37.

[10] *FiberTower AFR Order*, 28 FCC Rcd at 6840-41, paras. 38-40.

One month later, FiberTower filed a timely petition for reconsideration of the *FiberTower AFR Order*.[11] In the *FiberTower Reconsideration Order*, the Commission denied this petition for failure to meet the Commission's procedural requirements or to otherwise demonstrate any material error in the *FiberTower AFR Order*.[12]

6. FiberTower then appealed the *FiberTower Reconsideration Order* to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).[13] In its appeal, FiberTower argued, among other things, that the Commission made a material factual mistake when it concluded that FiberTower had not constructed any of the 689 licenses.[14] FiberTower represented to the court that it had in fact constructed 28 of the 24 GHz licenses and at least 14 of the 39 GHz licenses at issue.[15]

7. In 2015, the D.C. Circuit issued its decision, affirming in part and remanding in part the Commission's decision. While refusing to consider certain of FiberTower's arguments that had not been presented to the Commission,[16] the D.C. Circuit affirmed the Commission's interpretation of its substantial service standard, finding that it "is consistent with the text of the regulations and rulemaking records."[17] The court stated that "[n]othing in the text [of sections 101.3, 101.17(a)(1), (2), (3), and 101.527(b)(1)] indicates that non-construction activities alone will suffice to show substantial service."[18] The court held, however, that the Commission had erred in applying its "'substantial service' interpretation to 42 licenses because their renewal applications stated that construction had occurred."[19] For this reason, the D.C. Circuit Court ruled:

> we affirm in part and we remand for the Commission to determine whether there was substantial service for the forty-two licenses in which FiberTower stated there had been construction, *and to consider anew* FiberTower's requests for an extension or waiver of the substantial service requirement based on an accurate understanding of the renewal record.[20]

8. In 2017, AT&T Mobility, LLC (AT&T), FiberTower, and all of FiberTower Corporation's stockholders entered into a stock purchase agreement.[21] Under the terms of the stock purchase agreement, AT&T acquired "*all* of the rights to FiberTower's licenses and authorizations," including the licenses that were the "subject of the pending remand from the United States Court of Appeals . . . ."[22] On February 13, 2017, AT&T filed applications to transfer the control of FiberTower's

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[11] Petition for Reconsideration, FiberTower Spectrum Holdings LLC (filed June 6, 2013).

[12] *FiberTower Spectrum Holdings LLC*, Order on Reconsideration, 29 FCC Rcd 2493 (2014) (*FiberTower Reconsideration Order*).

[13] *FiberTower Spectrum Holdings, LLC v. Federal Communications Commission*, 782 F.3d 692, 693-694 (2015) (*FiberTower*).

[14] *FiberTower*, 782 F.3d at 699-700.

[15] *FiberTower*, 782 F.3d at 699.

[16] *FiberTower*, 782 F.3d at 693, 696-697.

[17] *FiberTower*, 782 F 3d at 699.

[18] *FiberTower*, 782 F.3d at 698.

[19] *FiberTower*, 782 F.3d at 694.

[20] *FiberTower*, 782 F.3d at 700-701 (emphasis added).

[21] File No. 0007652635, Description of the Transaction and Public Interest Statement (Public Interest Statement) at 3.

[22] Public Interest Statement at 3.

licenses to AT&T.[23] The applications indicated that when the transaction was consummated, the licenses held by FiberTower Spectrum Holdings LLC would be transferred from the control of FiberTower Corporation to AT&T Mobility.[24]

9. On January 24, 2018, FiberTower and the Commission reached a settlement of various pending proceedings, including the D.C. Circuit's remand, intended "to avoid the delay, uncertainty, inconvenience, and expense of further litigation."[25] Under the terms of the Settlement Agreement, FiberTower agreed to (1) relinquish all of its 24 GHz licenses, including those that were among the 42 licenses addressed by the D.C. Circuit, and some of its 39 GHz licenses, a subset of which were also referred to by the court; (2) terminate the remand proceeding and a pending related bankruptcy proceeding; and (3) transfer to the United States Treasury payments totaling $27 million, conditioned on reinstatement of the remaining licenses and extension of the construction deadline for those licenses; and the closing of the transfer of control of FiberTower.[26]

10. Following the execution of the Settlement Agreement, the Bureau's Broadband Division (Division) released the *Order on Remand* holding that FiberTower had justified a waiver of the June 1, 2012 substantial service deadline applicable to the Reinstated 39 GHz licenses and granted the extension requests associated with those licenses.[27]

11. Shortly thereafter, the Bureau approved the transfer of the Reinstated 39 GHz licenses to AT&T Mobility.[28] After carefully evaluating the likely competitive effects, the Bureau found that the transaction was unlikely to result in any significant public interest harms.[29]

12. On February 26, 2018, CCA timely filed an Application for Review seeking reversal of the *Order on Remand*.[30] CCA argues that the Commission should review the *Order on Remand* because, it alleges, the Bureau exceeded its delegated authority, violated clear judicial directives, and flouted basic requirements of the Administrative Procedure Act (APA) when it reversed the decisions of the Commission and the D.C. Circuit, and because the waiver analysis used by the Bureau was irrational and conflicts with established law and policy.[31] In the alternative, CCA indicates that to the extent that the Commission believes that the Bureau must be afforded an opportunity to pass on the issues it raises, it seeks reconsideration of the *Order on Remand*.[32]

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[23] File Nos. 0007652635 and 0007652637 (filed Feb. 13, 2017).

[24] Public Interest Statement at 3.

[25] *See Order on Remand*, 33 FCC Rcd at 276, Appendix 3.

[26] *See Order on Remand*, 33 FCC Rcd at 276-284, Appendix 3.

[27] *Order on Remand*.

[28] *Application of AT&T Mobility Spectrum LLC and Fiber1Tower Corporation*, Memorandum Opinion and Order, 33 FCC Rcd 1251 (WTB 2018) (*Consent Order*). CCA filed a separate application for review or petition for reconsideration of the *Consent Order*. In a separate *Memorandum Opinion and Order* adopted on the same date as this order, we deny CCA's pleading.

[29] *Consent Order*, 33 FCC Rcd at 1261, para. 27.

[30] Application for Review, or in the alternative, Petition for Reconsideration, Competitive Carriers Association (filed Feb. 26, 2018) (PFR). AT&T filed a timely opposition to the PFR. Opposition of AT&T, AT&T (filed Mar. 13, 2018) (Opposition). CCA filed a reply. Reply to Opposition of AT&T, Competitive Carriers Association (filed Mar. 23, 2018) (Reply).

[31] PFR at 8.

[32] PFR at 1.

13. On February 28, 2018, FiberTower and AT&T Mobility consummated the transaction, and the licenses held by FiberTower Spectrum Holdings LLC were transferred from the control of FiberTower Corporation to AT&T Mobility.[33]

III. DISCUSSION

A. Commission Review

14. As discussed above, CCA asks that the filing before us be considered an Application For Review, or in the alternative, a Petition for Reconsideration. Under Section 1.115(c) of the Commission's rules, an application for review will not be granted if it relies on questions of fact or law upon which the designated authority has had no opportunity to pass.[34] CCA had the opportunity to file an informal objection against the Extension and Waiver Request back in 2012 when it was originally filed. Because CCA did not file any objection or other pleading against FiberTower's Extension and Waiver Request, the Bureau has had no opportunity to consider the arguments raised by CCA. Thus, we dismiss CCA's Application for Review. With respect to CCA's request, in the alternative, to treat the filing as a petition for reconsideration, the Bureau has referred CCA's pleading to the full Commission under Section 1.104(b) of the Commission's rules,[35] in order to expedite the resolution of the issues in this matter. Under Section 1.106(b) of the Commission's rules, CCA must show good reason why it was not possible for it to participate in the earlier stages of the proceeding.[36] CCA has made no showing in this regard, therefore we dismiss the PFR.[37] However, in order to provide a clear resolution of the substantive issues, we also, in the alternative, address CCA's arguments and reject them on the merits below.

B. Standing

15. AT&T argues that CCA lacks standing to challenge the Bureau's decision.[38] CCA responds that its "members have been denied access to spectrum resources critical to their ability to provide next-generation 5G services."[39] Under Section 155(c)(4) of the Communications Act of 1934, as amended, and Section 1.115(a) of the Commission's rules, a filer has standing to submit an application for review of a decision by which it is "aggrieved."[40] The Commission accords party-in-interest standing to a petitioner that alleges facts sufficient to demonstrate that grant of the application would cause it to suffer a direct injury.[41] In addition, petitioners must demonstrate a causal link between the claimed injury and the challenged action.[42] To demonstrate a causal link, petitioners must establish that the injury can be traced to the challenged action and that the injury would be prevented or redressed by the relief

[33] File Nos. 0007652635 and 0007652637. *See also* Public Interest Statement at 3.

[34] 47 C.F.R. § 1.115(c).

[35] 47 C.F.R. § 1.104(b).

[36] 47 C.F.R. § 1.106(b).

[37] *See Continental Media Group, LLC Station WXMY(AM), Saltville, VA*, Memorandum Opinion and Order, 32 FCC Rcd 4187 (2017) (Commission affirms dismissal of PFR of consent to *pro forma* transfer of control (and renewal) applications for failure to participate earlier in proceeding).

[38] Opposition at 6-11.

[39] PFR at 25; Reply at 4.

[40] 47 U.S.C. § 155(c)4; 47 CFR § 1.115(a)(1).

[41] *See, e.g., Applications of AT&T Mobility Spectrum LLC*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16465, para. 16 (2012); *Wireless Co., L.P.*, Order, 10 FCC Rcd 13233, 13235, para. 7 (WTB 1995) (*Wireless Co.*), *citing Sierra Club v. Morton*, 405 U.S. 727, 733 (1972). *See also New World Radio, Inc. v. FCC,* 294 F.3d 164 (D.C. Cir. 2002). *See generally T-Mobile License LLC, AT&T Mobility Spectrum LLC, New Cingular Wireless PCS LLC*, Memorandum Opinion and Order, 29 FCC Rcd 6350, 6355, para. 12 (2014).

[42] *Wireless Co.*, 10 FCC Rcd at 13235, para. 7.

requested.[43] For these purposes, an injury must be both "concrete and particularized" and "actual or imminent, not conjectural or hypothetical."[44] There must be more than an "objectively reasonable likelihood" of threatened injury; such injury must be "certainly impending."[45] An organization may meet these standards in its own right or may demonstrate that one or more of its members meets these requirements.[46]

16. In applying those standards to CCA's application for review, we conclude that CCA has not adequately demonstrated standing. We agree with AT&T that CCA has failed to demonstrate a cognizable injury-in-fact that would be remedied by denying FiberTower's Extension and Waiver Request. For instance, CCA has not demonstrated that any of its members could or would be in a position to acquire the spectrum at issue here, or that any such member would benefit from FiberTower's retention of the licenses. To the extent that CCA seeks an auction of the spectrum, it has failed to provide anything other than speculation about that possibility or that any of its members would be willing and able to purchase such spectrum. Accordingly, CCA has not demonstrated that it is an "aggrieved" party within the meaning of Section 1.115(a)(1) of the Commission's rules.

17. We also reach the same conclusion when we consider CCA's pleading as a petition for reconsideration. As the Commission has held, "to qualify as a party in interest, a petitioner for reconsideration generally must have filed a valid petition to deny against the application whose grant the petitioner now seeks to have reconsidered."[47] Here, CCA did not participate in earlier stages of this proceeding, despite opportunities to do so. Where the petition for reconsideration is filed by one "who is not a party to the proceeding, it shall state with particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."[48] As explained above, CCA has made no showing in this regard. Finally, we note that the Act limits the statutory right to file petitions to deny to certain types of applications, which do not include the extension requests and waiver applications here.[49] [50]Even if CCA had filed a timely objection in 2012 against the Extension and Waiver Request, its status would have been limited to an informal commenter.

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[43] *Id*. Because "a licensing proceeding before the Commission is not an Article III proceeding," the Commission may determine in the public interest to allow participation by parties pursuant to Section 309(d) of the Communications Act who would lack Article III standing. *Channel 32 Hispanic Broadcasters, Ltd.*, Order, 15 FCC Rcd 22649, 22651, para. 7 (2000), *aff'd per curiam,* 22 Fed. Appx. 12 (2001). However, wireless applications have generally been reviewed using the foregoing Article III standard. *Rockne Educational Television, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 14402, 14405, para. 7 (WTB BD 2011). *See, e.g., Cellco Partnership,* 27 FCC Rcd at 10713, para. 36. For the reasons stated above, we find no public interest reason to depart from this practice here. *See Airadigm Communications, Inc.*, Order on Reconsideration, 21 FCC Rcd 3893, 3897, para. 14 & n.30 (WTB 2006), *review dismissed,* 26 FCC Rcd 6739 (WTB 2011).

[44] *Conference Group, LLC v. FCC,* 720 F.3d 956 (D.C. Cir. 2013), *quoting Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992).

[45] *Clapper v. Amnesty International USA*, 568 U.S. 398, 410 (2013).

[46] *See, e.g., Friends of the Earth, Inc.,* Memorandum Opinion and Order, 18 FCC Rcd 23622, 23622-23, paras. 2-3 (2003).

[47] *See Daniel R. Goodman*, Memorandum Opinion and Order, 13 FCC Rcd 21944, 21962, para. 30.

[48] 47 CFR § 1.106(b).

[49] *See* 47 U.S.C. §§ 309(d)(1) (right to file petition to deny applies against applications to which the public notice requirement of Section 309(b) applies); 309(c)(2)(D) (public notice requirement of Section 309(b) does not apply to applications for extension of time to complete construction of authorized facilities).

[5050] 47 U.S.C. § 155(c)4; 47 CFR § 1.115(a)(1).

C. Scope of the Court Remand and Process

18. CCA argues that the Bureau improperly reversed the decisions of the Commission and D.C. Circuit and thus exceeded its delegated authority, violated clear judicial directives, and flouted basic requirements of the APA.[51] Specifically, CCA contends that when the D.C. Circuit vacated the Commission's decision to deny FiberTower's extension and waiver requests, "it merely instructed the Commission to revisit its determination with respect to 42 licenses that the court reinstated."[52] CCA further argues that "[b]ecause the FiberTower licenses—other than the 42 that were subject to the D.C. Circuit's remand—remained terminated after the D.C. Circuit's decision, the Commission was not free to simply reinstate them after their terminations had become final."[53] In addition, CCA asserts that the Bureau violated the APA by not placing the 647 renewal applications on Public Notice.[54]

19. CCA's interpretation of the D.C. Circuit's decision is erroneous. Although the Bureau denied the 689 extension applications in the Commission's Universal Licensing System, those denials never became final because FiberTower sought timely review or appeals of the denials at each stage of the process. Moreover, in this case, upon FiberTower's request, the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, issued an order granting a preliminary injunction enjoining the Commission from "granting, transferring, assigning, or selling FiberTower's 24 GHz and 39 GHz licenses to any entity other than FiberTower or FiberTower's designee."[55] The Bankruptcy Court also enjoined the Commission from taking any action "that would impair or otherwise adversely alter Debtors' rights before the Commission on or on appeal of any decision of the Commission to contest (a) cancellation or termination of the FCC Licenses; or (b) a determination that the FCC Licenses were terminated or cancelled prior to entry of this Order."[56] In its decision, the D.C. Circuit states that "we vacate the orders denying these requests, [for extension of time to construct and a waiver of sections 101.3, 101.17(a)(1), (2), (3), and 101.527(b)(1) of the Commission's rules] so that the Commission may rule on FiberTower's requests in light of an accurate understanding of the license renewal record."[57] Indeed, the Court explicitly directed the Commission to consider the Extension and Waiver Request "anew."[58] CCA's view that the D.C. Circuit affirmed the cancellation of 647 of the 689 licenses is inconsistent with the plain language of the Court's opinion.

20. We also conclude that the Bureau did not violate the APA because it was not required to put the 647 renewal applications on Public Notice. Indeed, as noted above, the Communications Act explicitly exempts construction extension applications from the public notice requirement. CCA argues that the applications must be treated as applications for new licenses, which must be placed on public notice under the Communications Act because, as discussed above, it erroneously views the cancellation of the 647 licenses as an action affirmed by the Court. As discussed above, however, the D.C. Circuit did not finally adjudicate the status of FiberTower's licenses, and thus the Division had the authority to reinstate them.

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[51] PFR at 8-13.

[52] PFR at 9.

[53] PFR at 11.

[54] PFR at 11-13.

[55] *FiberTower Network Services Corp., et al., Debtors; FiberTower Network Services Corp., et al., Debtors v. Federal Communications Commission, Adv. No. 12-4104*, Order Granting Preliminary Injunction at 2 (Bankr. N.D. Tex., issued Sep. 27, 2012) ("*Preliminary Injunction Order*").

[56] *Id.*

[57] *FiberTower*, 782 F.3d at 700.

[58] *FiberTower*, 782 F.3d at 701.

D. Waiver Analysis

21. To obtain a waiver of the June 1, 2012 substantial service deadline to which its licenses were subject, FiberTower was required to show that (1) the underlying purpose of the deadline would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; *or* (2) in view of the unique or unusual circumstances of the instant case, application of the deadline would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[59] The Division concluded that FiberTower justified a waiver under the second prong of the waiver standard.[60]

22. We conclude that the Bureau properly applied the waiver standard in finding that FiberTower had shown that, in view of the unique or unusual circumstances of its case, application of the June 1, 2012 substantial service deadline applicable to the Reinstated 39 GHz licenses would be contrary to the public interest. CCA argues that '[t]he enormous weight that the Bureau placed on FiberTower's release of its claims created a lawless waiver standard . . . .'[61] CCA further argues that "the Bureau did not analyze the merits of FiberTower's actual or potential claims in litigation, and instead rested its decision of the mere fact that those claims exist."[62] We disagree. The Division's analysis relied not only on the existence of litigation, but on the particular benefits that would flow from the expeditious termination of litigation. Specifically, the Division found that ending the litigation would enable the Commission to reband both the 24 and 39 GHz bands so that they could be auctioned for 5G services.[63] Without the termination of the bankruptcy proceeding, which FiberTower agreed to in the Settlement Agreement, the Commission would not have been able to auction either of the 24 or 39 GHz bands because of the preliminary injunction issued by the bankruptcy court.[64] In arguing that the Commission should have taken action to cancel the licenses and auction the spectrum covered under those licenses, CCA ignores that vital point. To effectuate the rebanding of the 24 GHz and 39 GHz bands, the Commission and FiberTower agreed that FiberTower would relinquish its claims to its 24 GHz licenses, including licenses that it had timely constructed, and to the Abandoned 39 GHz licenses, also including licenses that it had timely constructed.[65] Because FiberTower agreed in the Settlement Agreement to relinquish its 24 GHz licenses, the Commission will be able to auction virtually the entire 24 GHz band.[66] In addition, FiberTower agreed to pay $27 million to the United States Treasury.[67] The Division specifically found that "[e]nding the litigation will help to restore regulatory certainty concerning the status of licensing in the 24 and 39 GHz bands, including identifying unassigned spectrum that could be licensed under the new Upper Microwave Flexible Use Service rules, and permitting service to be deployed more efficiently and expeditiously in these bands."[68] We rely on this unique combination of circumstances (not just the settlement of litigation) in affirming the result.

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[59] 47 C.F.R. § 1.925(b)(3).

[60] *Order on Remand*, 33 FCC Rcd at 257, para. 12.

[61] PFR at 14.

[62] PFR at 15.

[63] *Order on Remand*, 33 FCC Rcd at 257, para. 12.

[64] *Order on Remand*, 33 FCC Rcd at 257, para. 12.

[65] *Order on Remand*, 33 FCC Rcd at 279, Appendix 3.

[66] *Order on Remand*, 33 FCC Rcd at 279, Appendix 3.

[67] *Order on Remand*, 33 FCC Rcd at 257, para. 12.

[68] *Order on Remand*, 33 FCC Rcd at 258, para. 12.

23. CCA's remaining arguments concerning the Division's waiver analysis can be readily rejected. While CCA argues that the Division acted outside its delegated authority,[69] the Commission's rules authorize the Bureau to act on applications and waiver requests,[70] and we find no "new or novel questions of law or policy"[71] that required Commission action. We find that the Division's analysis of the facts was based on the well-established waiver standard contained in section 1.925 of the Commission's Rules.[72] As noted above, CCA's argument that the Commission was required to accept new applications for the spectrum covered by FiberTower's licenses[73] mischaracterizes the status of the licenses and the Court's remand. While CCA argues that FiberTower did not make an adequate showing under the first prong of the waiver standard,[74] the *Order on Remand* relied on the second prong of the waiver standard, and the rule only requires a showing under one of the two prongs.[75] CCA cites a series of cases where waivers of the LMDS substantial service requirement were denied, but none of those cases involved the unique factors noted in paragraph 22, *supra*.[76] Finally, CCA's argument that the Division's analysis was "irrational," is based on the incorrect premise that the Commission's "action as to those nearly 650 licenses had been *explicitly upheld* by the D.C. Circuit."[77]

IV. CONCLUSION AND ORDERING CLAUSES

24. The Division acted consistent with the D.C. Circuit's remand and with the Communications Act and Commission rules when it found that FiberTower had justified a waiver of sections 101.3, 101.17(a)(1), (2), (3), and 101.527(b)(1) of the Commission's rules. The *Order on Remand* demonstrated that in view of the unique circumstances of this case, the application of the June 1, 2012 substantial service deadline to the Reinstated 39 GHz Licenses would be contrary to the public interest. For the reasons discussed, we dismiss CCA's Application for Review for lack of standing, and in the alternative, deny it on the merits.

25. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.104, 1.106, 1.115, and 1.925 of the Commission's Rules, 47 C.F.R. §§ 1.104, 1.106, 1.115, 1.925, that the Application for Review, or in the alternative, Petition for Reconsideration filed by the Competitive Carriers Association on February 26, 2018 **IS DISMISSED**. In the alternative, the Application for Review/Petition for Reconsideration **IS DENIED**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[69] PFR at 16.

[70] 47 CFR § 0.131(a).

[71] *See* 47 CFR § 0.331(a)(2).

[72] In any event, even if it were an error for the Division to act on the remand in the first instance, any error would be harmless because CCA has now obtained Commission review of the action.

[73] PFR at 21-23.

[74] PFR at 18-21.

[75] *See* 47 CFR § 1.925(b)(3) (rule allows grant of a waiver if the first *or* second prong of the test is met).

[76] *See* PFR at 16 n.48.

[77] PFR at 17.