

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
Higher Ground LLC) IBFS File No.: SES-LIC-20150616-00357
Application for Blanket Earth Station) Call Sign: E150095

To: The Commission

**APPLICATION FOR REVIEW
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.115 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully requests Commission review of the above-identified Order and Authorization (“Order”) issued under delegated authority by the International Bureau, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology (collectively, “Bureaus”). The Order granted Higher Ground LLC (“Higher Ground”) a blanket earth station license and approved various waivers that collectively permit it to operate on a non-interfering basis up to 50,000 mobile earth terminals (“SatPaqs”) in the 5925-6425 MHz band (“6 GHz Band”) for consumer-based text messaging/light email and Internet of Things (“IoT”) communications.

For the reasons described below, it is EWA’s belief that the action taken by the Bureaus conflicts with established Commission policy. The Alliance urges the FCC to set aside the grant of the waiver, return Higher Ground’s application to pending status, and initiate a rulemaking proceeding in which the many concerns about the interference potential of the proposed system can be evaluated in greater detail and weighed against its prospective benefits to the public.

EWA has standing to seek Commission review of the Order. It participated previously in this proceeding by filing *ex parte* comments in response to the Higher Ground application and waiver request on November 22, 2016.¹ In that filing, it explained that many of the Alliance's members operate 6 GHz microwave systems; in the language of the Order, fixed service ("FS") links. EWA stated that while it strongly supports more intensive use of spectrum, including through appropriately crafted sharing arrangements, the scope of the waiver relief requested by Higher Ground and the interference concerns raised by virtually every constituency that uses 6 GHz FS links warranted thorough evaluation in a rulemaking proceeding. Most commenting parties urged the Commission to proceed, if at all, through rulemaking, and not by granting individual waiver relief to Higher Ground.

The Bureaus disagreed. They granted the requested license and waivers subject to certain conditions, stating:

The rulemaking process is particularly appropriate for establishing a new category of spectrum use that is not tailored for one individual's operations, while the adjudicative process, like a waiver proceeding, generally functions as a more effective vehicle for addressing more individualized circumstances. In this case, Higher Ground proposed a specific, unique application of the C-band that does not warrant a rulemaking of general applicability. Additionally, Higher Ground has adequately demonstrated an alternative methodology to protect other users of this spectrum....²

The Alliance has only the highest regard for the technical capabilities of the Bureaus. However, with due respect, the fundamental change in the utilization of a satellite allocation sought by Higher Ground could impact the operations of systems on which public safety, utilities, pipelines, railroads, and numerous other 6 GHz FS licensees rely for critical communications. The Bureaus believe that the protections imposed in the Order are adequate to

¹ It is, at a minimum, surprising that the International Bureau did not issue a Public Notice specifically inviting public comment on this application, a decision that was inconsistent with the general FCC practice of seeking comment on waiver requests that raise novel issues, even when they are of much more limited potential impact.

² Order at ¶ 34.

protect against interference, but many incumbents clearly have a different view. As stated by the Fixed Wireless Communications Coalition in its Application for Review, “With more information and a suitable setting for negotiations, the FS and Higher Ground might have collaborated on changes that could have resolved our concerns while still meeting Higher Ground’s business needs.”³

FS incumbents, many of which are EWA members, have invested substantially in the 6 GHz band. Many were required to relocate to this spectrum when other, lower microwave bands were reallocated for consumer-based services. Because of well-tested, reliable frequency coordination processes, they operate in the essentially interference-free environment needed for their types of critical systems. The Bureaus may be correct in their assessment that the interference avoidance techniques incorporated by Higher Ground in its “unconventional and proprietary”⁴ automated coordination process will work as promised (and as well as current coordination requirements) and, in conjunction with the low power of the SatPaqs, will present no meaningful potential for interference to co-channel or adjacent channel FS systems. But it is precisely because of the unconventional and propriety nature of that process that the conclusion should be tested in a rulemaking proceeding.

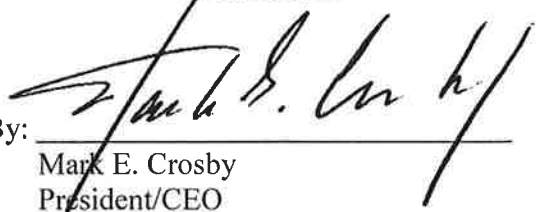
Higher Ground’s proposed deployment of up to 50,000 mobile terrestrial units in a heavily encumbered band may be a “specific, unique application” on satellite spectrum, but any failure of its interference avoidance techniques has the potential to disrupt the operations of many thousands of incumbent FS systems. As pointed out by numerous parties in this proceeding, after-the-fact remediation will not be adequate should interference occur, even if that interference were traceable to Higher Ground’s operations, which it may not be. A waiver of the

³ Fixed Wireless Communications Coalition Application for Review (filed Feb. 10, 2017).

⁴ Order at ¶ 25.

FCC rules with that scope of potential impact, a proposal that relies on unconventional and proprietary techniques to avoid interference and has elicited objections and concerned comments from all segments of the FS licensee community, should be considered in a rulemaking, not approved pursuant to delegated authority in an application-based adjudicative process. The outcome should be a Commission decision that all parties can accept as an appropriate balancing of the rights of FS incumbents and the public benefit of introducing another broadband consumer service.

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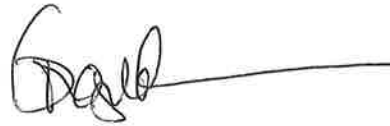
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Certificate of Service

I, Virginia A Johnstone, a paralegal with the law firm Lukas, LaFuria, Gutierrez & Sachs, LLP, hereby state that true copies of the foregoing **APPLICATION FOR REVIEW** were sent by first class mail, postage prepaid, February 17, 2017, to the attached Service List.

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