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June 25, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D. C. 20554

Re: Response to Informal Opposition
FCC File No. 0006838311
John Ferrari

Dear Ms. Dortch:

This letter responds to the June 17, 2015 Informal Opposition (“Opposition”) filed by Smartcomm LLC (“Smartcomm”) with regard to the above-referenced application (“Application”) filed by John Ferrari (“Mr. Ferrari”). The Opposition asks that the Application be dismissed with prejudice because it was coordinated by the Enterprise Wireless Alliance (“EWA” or “Alliance”) and did not satisfy the co-channel separation requirements of Rule Section 90.621(b) vis-à-vis station WQUA523 (“License”), a license held by Mr. Ferrari for the same channels in the same general area, which License was canceled immediately after the Application was filed with the Federal Communications Commission (“FCC”).¹

The Alliance agrees that the Application was coordinated in error. It requested its dismissal and so advised Mr. Ferrari.² The FCC granted that request on June 24, 2015. However, the Application and the License highlight issues that EWA has brought to the FCC’s attention previously and that the Alliance believes warrant prompt action.³

¹ The Opposition references non-compliance with Rule Section 1.934 but EWA believes that Section 90.621(b) is the applicable provision.

² EWA does not agree with the basis for Smartcomm’s position that the Application should be dismissed with prejudice. A licensee does not violate an FCC rule by not constructing a Part 90 authorization within the applicable construction period. It does not violate an FCC rule by subsequently applying to license the same frequencies in the same general area provided the application otherwise satisfies FCC requirements. This Application did not because it was coordinated prematurely, but had it been filed immediately after License cancellation, the filing of the Application, standing alone, would not evidence “an attempt to evade the Commission’s license construction requirements.” Opposition at 1. If that were the case, a very significant number of Part 90 applications should have been dismissed with prejudice over the years.

³ See WP Docket No. 15-32; Reply Comments of EWA (filed May 26, 2015); Ex Parte Letter (filed June 17, 2015).

The history of the License is instructive. The original application (#0006197219) was coordinated and filed by MRFAC and identified Smartcomm License Services, L.L.C. (“Smartcomm License Services”) as the licensee contact.⁴ An application (#0006714388) to modify the License was submitted through a different coordinator, PCIA, and still identified Smartcomm License Services as the contact.⁵ While that modification application was pending, Mr. Ferrari or someone acting on his behalf with his ULS password filed sequential administrative updates. The first (#0006717655) changed the contact to Mr. Ferrari himself. The second (#0006726240) changed it from Mr. Ferrari to Gray DS, Attn: Dale Gray. PCIA then amended the pending modification application, which modification was granted listing Mr. Gray as the contact. Mr. Mark Schroeder of Arcturus Radio then contacted EWA on behalf of Mr. Ferrari and requested that EWA coordinate another application (#0006795658) to modify the License. That application was subsequently dismissed because, in the interim, an application was filed to cancel the License. The cancellation application bore the electronic signature of Dale Gray rather than Mr. Ferrari.

EWA has consistently expressed serious concern about companies that are in the business of marketing and preparing FCC applications as investment opportunities.⁶ While the Alliance regrets its error in certifying the Application prior to cancellation of the License,⁷ the larger issue is whether the parties that purchase these licensing services have a legitimate intention to construct and operate the authorizations obtained in their names or any meaningful knowledge of the systems for which they are applying and the associated FCC requirements. While Mr. Ferrari is free to abandon his relationship with Smartcomm in favor of one of its competitors, there is nothing in the history of the License to inspire confidence that the multiple FCC applications submitted on his behalf through multiple frequency coordinators represent a legitimate interest on the part of an individual to build and operate a commercial SMR system.

EWA has urged the FCC to address this issue by convening an industry meeting of coordinators, vendors, and other interested parties, including Smartcomm, its affiliated entities and Arcturus Radio if the FCC wishes. The Alliance has suggested that among the topics for

⁴ It is curious that Smartcomm did not mention its initial involvement with Mr. Ferrari when castigating him in the Opposition for failing to construct the License and for attempting to evade FCC requirements.

⁵ Interestingly, that modification includes a short-space showing to station WQSF362, a license held by Canmaz Spectrum, LLC (“Canmaz”). The Canmaz license identifies Spectrum Networks Group (“SNG”), a company associated with Smartcomm, as the contact and the spectrum has been leased to M2M Spectrum Networks, LLC (“M2M”), yet another Smartcomm affiliate. The modification that permitted short-spacing of Mr. Ferrari’s License to the Canmaz authorization required the repeaters on Mr. Ferrari’s License to be limited to 47.64 ERP, an atypically low power level for a commercial SMR station.

⁶ See n. 3.

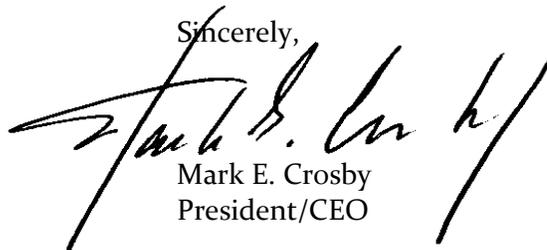
⁷ The Opposition also calls for the admonishment of EWA for what Smartcomm describes as complicity in a scheme by Mr. Ferrari – and perhaps Arcturus Radio – to violate FCC rules, claiming that this is not the first time the Alliance has “assisted applicants in skirting the Commission’s rules in this manner.” Opposition at 2. It attempts to support that allegation by reference to an application filed by 5G Properties, LLC, station WQUI888 (#0006325482). SNG/M2M challenged that application claiming that it has real-party-in-interest ties to an application for Golden State Communications, Inc. coordinated by and then withdrawn by EWA. As the Alliance explained in its November 6, 2014 response to that challenge, EWA and other frequency coordinators are not authorized by the FCC to question the *bona fides* of applications that on their face satisfy all FCC requirements. At present, questions about claimed eligibility, loading, and real-party-in-interest issues are exclusively within the FCC’s purview.

discussion might be whether the scope of frequency coordinator authority should be expanded to areas such as:

- The authority to question applicants about their understanding of the FCC rules and their ability to construct and operate their proposed systems, and to forward for FCC review, but not certify, applications from parties whose responses raise concerns about their *bona fides*; and
- Playing a more active role in construction verification, including onsite construction investigation, securing site owner construction affidavits, and confirming equipment acquisition.

The Alliance looks forward to constructive participation by all interested parties in addressing the issues raised by this and other applications.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Crosby". The signature is stylized and written in a cursive-like font.

Mark E. Crosby
President/CEO

cc: John Ferrari (via email) (ki-gong@att.net)
Dale Gray (via email) (dale@grayds.com)
M. Rob Somers (via email) (rob.somers@smartcommllc.com)
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