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Via Electronic Mail

Diane Cornell, Special Counsel
Office of the Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Request for Input to Improve Efficiency of the Commission's Processes

Dear Ms. Cornell:

Keller and Heckman LLP is pleased to respond to your [blog post](#) on the Official FCC Blog, dated November 18, 2013, as updated on November 19, 2013, requesting ideas and insights "to improve the efficiency of the process at the FCC."

As part of its telecommunications practice, Keller and Heckman represents critical infrastructure industry ("CII") companies on policy, compliance, and licensing matters before the Commission. These companies include power generation and power delivery (utility) companies; oil and gas companies engaged in the exploration, production, refining, and transportation of crude oil, refined petroleum products, natural gas and natural gas liquids; and rail transportation companies. Based on statutory obligations related to worker safety, human health and environment, security, reliability and availability, and the need for operational control, CII companies operate extensive private wireless systems.

Each month, Keller and Heckman typically submits several hundred applications through the FCC's Universal Licensing System ("ULS") for authority to operate stations under Parts 80, 87, 90 and 101 of the Commission's rules. In addition, we represent clients in Commission auctions and in the leasing, partitioning, and disaggregation of area-wide licenses governed by Parts 22, 24, 27, 80 and 90 of the Commission's rules. We work with International Bureau Application Filing and Reporting System (IBFS) in connection with satellite earth station applications.

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Keller and Heckman also advises and assists clients in (i) satisfying the FCC's Antenna Structure Registration (ASR) requirements, including whether an Environmental Assessment (EA) is required and, if so, the steps required to conduct an EA, and (ii) complying with the FAA's antenna structure marking and lighting requirements.

Our response to your blog post pertains principally to "ideas to improve the focus, speed and efficiency of the FCC's workflows" related to Wireless licensing and tower registration processes. Many of our suggestions pertain to changes in Commission procedures to enhance compliance, minimize demands placed on the Commission's limited resources, particularly the demands placed on the Wireless Bureau's Licensing Division staff, and enhance transparency and timeliness in connection with the processing of applications for systems operating near or north of Line A.

Improve Compliance

Many CII companies have several hundred FCC licenses (some have several thousand) and almost all of these companies have established procedures to ensure the timely filing of renewal applications and notices of construction. As a rule, many CII companies are heavily regulated and have established processes to ensure compliance with respect to all applicable regulations. From time to time, a renewal application or a notice of construction may not be filed timely.

Keller and Heckman is deeply concerned with the current Commission practice that, when a licensee identifies these oversights and discloses them to the Commission, the response is a Notice of Apparent Liability from the Enforcement Bureau that leads to a Forfeiture Order or a lengthy series of negotiations leading to a Consent Decree and mandatory Compliance Plan covering the entire company. The amount of the forfeiture imposed or "voluntary contribution" often is adjusted upward, because the company is large and presumably has an "ability to pay." The voluntary nature of the disclosure usually is not considered sufficient for a meaningful downward adjustment.

In short, any CII company voluntarily disclosing these types of violations is rewarded with significant fines and penalties – despite the fact that the company may be maintaining hundreds of licenses in full compliance with the Commission's requirements.

A better approach for improving compliance would be the adoption of a policy that encourages self-audits and the timely self-disclosure of instances of non-compliance comparable to the audit policies adopted by other agencies, such as the primary self-disclosure policy of the Environmental Protection Agency ("EPA"). Under EPA's Audit Policy, gravity-based penalties are not imposed so long as the as the company timely discloses the non-compliance pursuant to a

systematic audit and otherwise satisfies nine (9) conditions. In the absence of an audit, if non-compliance is identified and disclosed the potential-gravity based penalty is reduced by 75%.¹

**Streamline Processing of FCC Forms 601, Question No. 50,
Felony Disclosures and Other Basic Qualification Questions**

Presently, Question 50 of the FCC Form 601 requests whether the applicant or an entity that controls the applicant, directly or indirectly, has been convicted of a felony by a United States court. In addition to Question 50, Question 49, which inquires whether an applicant has had an application denied or licensed revoked by the Commission, and Question 51, which inquires whether the applicant or its controlling entities have monopolized or attempted unlawfully to monopolize radio communications, comprise the “Basic Qualification Questions” of the FCC Form 601.²

If an answer to any of these questions is “Yes,” the applicant must either provide a supplemental explanatory statement *or* reference a prior application, providing the file number and the FCC’s previous disposition of the application. In either case, a “Yes” response to these questions causes the application to go “off-line” and undergo more detailed review by the Licensing Division. Processing times are extended.

Since the basic felony information already has been provided to the Commission, further delay in processing future applications seems unnecessary and counterproductive. Keller and Heckman proposes that the Commission allow applicants to submit one filing that provides the “Yes” response and explains the nature of the felony conviction. After the FCC grants that application and for all subsequent applications, licensees should be allowed to answer Question 50 with a “No” response, and attach a statement that referencing prior acknowledgement of the felony disclosing in granting that initial application.

In addition, the Commission should limit Question 50 to felony convictions entered into within ten (10) or fewer years of filing the application. As the question is drafted, felony convictions occurring at any time during an applicant’s existence requires an affirmative answer forevermore. A reasonable, limited “look-back” period of no more than ten (10) years is warranted. Moreover, Keller and Heckman is not aware of a single application for authority to

¹ See, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations", 65 FR 19,618 (04/11/00) available at <http://www.epa.gov/compliance/resources/policies/incentives/auditing/auditpolicy51100.pdf> (last viewed December 2, 2013).

² On the FCC Form 603, the Basic Qualification Questions are 100-102.

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operate a station to meet the licensee's internal communications requirements that has been denied because of an affirmative response to Question 50.

Industry Canada--Line A Issues

Many CII firms have operations located near or north of Line A. Our experience with Industry Canada (IC) is that almost every application for new or modified authority is returned by IC due to alleged Harmful Interference Anticipated (HIA) concerns. IC's policies and practices are not transparent, and there are no guidelines or criteria that domestic applicants can look to and reasonably rely upon.

Keller and Heckman urges the FCC to work with IC to establish published guidelines and/or criteria to guide U.S. applicants in preparing applications for new or modified authority for systems north of or otherwise "inside" Line A, which would allow for the submission of applications without the uncertainty of whether concurrence will be granted.

In addition, our understanding from IC is that all applications, regardless of whether they are for regular or Special Temporary Authority, are placed in the same processing queue. We request the FCC work with IC on establishing an alternate, more time-sensitive review process for emergency requests. In addition, the ongoing "audit" by the FCC staff of previously licensed stations operating north of Line A imposes unforeseen and unreasonable burdens on Commission licensees. Greater transparency regarding the need for and nature of this process is warranted.

Improve Clarity on NEPA Requirements for Antenna Structure Registrations (ASRs)

There continues to be uncertainty regarding the FCC's rules implementing the National Environmental Policy Act (NEPA) environmental review for new communications towers. Several years ago, the FCC implemented the new filing requirements for Antenna Structure Registrations (ASRs). The new filing procedures includes involvement from federal and local actors, Indian Tribal Nations, the State Historical Preservation Offices, multiple filings and required forms, as well as national and local notice requirements. The FCC provided guidance materials on the agency website and hosted a series of workshops discussing the environmental review process, but the process is still confusing and cumbersome. Tower owners and filers would benefit from additional communications regarding the FCC's new tower review procedures, such public or industry-specific workshops.

A similar need for transparency exists with respect to Section 1.1311(e) of the Commission's rules, which provides that an EA need not be prepared and submitted to the FCC in connection with an application "if another agency of the Federal Government has assumed

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responsibility” for determining whether the proposed facilities will have a significant effect on the quality of the human environment. In connection with applications filed within the last year, the Commission staff advised that the Commission only recognizes the environmental impact studies of certain departments or agencies of the Federal Government, not necessarily the agency or department having the statutory responsibility to conduct the environmental assessment and, as necessary, prepare the Environmental Impact Statement (EIS). This position was taken even though the EIS expressly covered the proposed antenna structures.

To the extent the responsible agency’s environmental assessment or EIS encompasses antenna structures and any other communications facility and consistent with Section 1.1311(e), the Commission should accept as final that agency’s determination.

Email ULS Notices

Currently, ULS notices such as return letters, dismissal letters, and construction reminders are sent by U.S. mail. The FCC also should send such notices electronically to the email address(es) listed on the license. This will result in more timely notice to licensees and applicants and reduce instances in which notices are not received.

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In closing, Keller and Heckman appreciates and applauds the Commission’s willingness to review and improve its processes. We would welcome the opportunity to discuss with you in person the matters highlighted in our letter.

Sincerely,



C. Douglas Jarrett
Partner