

**Before the
Federal Communications Commission
Washington, DC 20554**

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

REPLY TO CONSOLIDATED OPPOSITION OF HIGHER GROUND LLC

The Association of Public-Safety Communications Officials-International, Inc. (APCO) hereby submits the following reply to the Consolidated Opposition of Higher Ground LLC¹ in the above-captioned proceeding.²

Founded in 1935, APCO is the nation’s oldest and largest organization of public safety communications professionals. APCO is a non-profit association with over 27,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including 9-1-1 Public Safety Answering Points (PSAPs), emergency operations centers, radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies.

APCO remains concerned about the potential harmful interference that grant of Higher Ground’s blanket earth station license application threatens to the thousands of public safety microwave licensees currently operating in the 6 GHz band. APCO also continues to oppose the

¹ Consolidated Opposition to Applications for Review of Higher Ground, LLC, IBFS File No. SES-LIC-20150616-00357 (Mar. 6, 2017) (“Opposition”).

² In the Matter of Higher Ground LCC Application for Blanket Earth Station License, File No. SES-LIC-20150616-00357, *Order and Authorization*, DA 17-80 (International Bur., Wireless Telecommunications Bur., Office of Engineering and Technology rel. Jan. 18, 2017) (“Order”).

use of a proprietary, unproven frequency coordination and spectrum sharing method in a public safety band. Higher Ground's Opposition pays little attention to APCO's public safety-specific concerns, evidencing its continuing failure, as reflected in the Order, to account for impacts to public safety throughout the entire course of this proceeding.

I. Higher Ground Failed to Address APCO's Specific Public Safety Concerns

Higher Ground's Opposition is the latest missed opportunity to address the potential impacts to public safety.³ With the exception of a few footnotes,⁴ Higher Ground used the cloak of a consolidated opposition to focus almost entirely on the concerns of private business entities.⁵ Additionally, Higher Ground simply rehashes the steps it claims to have taken to address potential interference rather than providing specific evidence that public safety licensees will be protected from harmful interference.

For example, Higher Ground repeats that it has "engaged in multiple demonstrations" of its Channel Master software with FCC staff and unidentified "third parties"⁶ that, to APCO's knowledge, did not include any public safety entities. Considering that there are a large number of public safety licensees in the 6 GHz band, Higher Ground should have engaged in a live pilot of its coordination method in collaboration with public safety entities.⁷

Further, Higher Ground states, "With few instances of interruptions, an FS operator that experiences an interruption can approach Higher Ground and seek information from its log as to whether there was a SatPaq Transmission in the vicinity of the interruption at the time it

³ APCO was concerned that the Public Safety and Homeland Security Bureau (PSHSB) was not included in issuing the Order, and now believes that the Bureau may not have even been involved at all. *See* Application for Review of APCO International, IBFS File No. SES-LIC-20150616-00357, at 2 (Feb. 17, 2017) ("AFR").

⁴ Opposition at n. 44, n. 58, n. 66.

⁵ As stated in APCO's Application for Review, APCO shares many of the concerns voiced by these private business entities. *See* AFR at 2.

⁶ Opposition at 4.

⁷ APCO voiced concerns with the Channel Master software's lack of proven effectiveness and its ability to adequately protect new and existing licensees in the 6 GHz band from harmful interference. AFR at 3-4.

occurred.”⁸ This is not good enough for public safety. Any interruptions to public safety operations can endanger both the public and first responders. An interruption should not occur in the first place, but if it does, it should be the responsibility of Higher Ground to detect the problem, rectify it, and notify the impacted public safety entity. Public safety entities should not have to perform after-the-fact inquiries if service is interrupted.

Higher Ground also argues that “The Channel Master analysis takes into account all relevant ULS data for each specific point-to-point receiver within line-of-site, including antenna patterns, antenna height, diffraction, and then considers SatPac transmit power, polarization, diversity, orientation and satellite choice.”⁹ Among other concerns, reliance on ULS data likely would not account for Special Temporary Authority (STA) granted to public safety, especially under exigent circumstances. Further, the Commission’s rules permit certain emergency operations (i.e., during a storm or other disaster) without requiring prior notice.¹⁰ The above examples further highlight the consequences of failing to properly consider the potential impacts to public safety.

II. The Commission Should Have Proceeded Through a Rulemaking

In addition to the concerns previously raised over use of a waiver rather than a rulemaking of general applicability,¹¹ a rulemaking could reveal whether there are additional uses of this spectrum (if non-interfering) that would benefit the public interest, including for public safety-related purposes. Further, the waiver examples Higher Ground offers in support of its arguments are unpersuasive. One example involves mobile earth terminals operating aboard

⁸ Opposition at 8.

⁹ *Id.* at 11.

¹⁰ 47 C.F.R. § 101.205.

¹¹ APCO agreed with the concerns raised by other parties regarding the Bureau’s decision to use a waiver process rather than proceed with a Commission rulemaking. AFR at 2.

ships, and the other involves authorized mobile earth terminal operations, but only on a secondary basis.¹² These examples are quite dissimilar from the much more expansive blanket license granted to Higher Ground.

Moreover, Higher Ground's statements regarding its activities throughout the application process illustrate the flaw in its defense of the waiver process. To quote Higher Ground, "Throughout the application process, Higher Ground has sought input and engaged with FWCC and other members of the point-to-point microwave community, and there is little reason to believe that a rulemaking would have promoted additional negotiation and collaboration between Higher Ground and FS interests, as FWCC and EWA suggest."¹³ Having failed to even mention collaboration with public safety entities, Higher Ground could not have provided a more stark illustration of its failure to account for public safety and the necessity of proceeding through a rulemaking.

Additionally, in an unconvincing and dismissive manner, employing a single footnote, Higher Ground addresses APCO's lack of notice of this proceeding.¹⁴ Higher Ground states, "APCO asserts that it lacked notice of Higher Ground's application because the application was not processed through the Public Safety and Homeland Security Bureau ... but that is no basis to find any procedural error. In any event, any perceived error resulting from the Bureaus' decision to proceed through waiver rather than rulemaking would be harmless error because there was no prejudice to FS stakeholders' ability to advocate their positions before the Commission."¹⁵ Claiming harmless error misses the point completely. APCO reminds Higher Ground and the Commission that "promoting safety of life and property through the use of wire and radio

¹² Opposition at 16-17.

¹³ *Id.* at 17.

¹⁴ *Id.* at n. 66.

¹⁵ *Id.*

communications” is among the purposes of the Commission.¹⁶ It is an imperative that the Commission fully consider the effects that grant of this application may have on public safety operations and communications.

CONCLUSION

Higher Ground had the opportunity to address APCO’s fundamental public safety concerns but failed to do so. Therefore, the Commission should reverse the Bureaus’ Order, initiate a formal rulemaking proceeding to consider Higher Ground’s proposal, and require Higher Ground to conduct a live test, coordinated with public safety, to assess the effectiveness of its proposed coordination system to protect licensed operations.

Respectfully submitted,

APCO INTERNATIONAL

By: /s/

Jeffrey S. Cohen
Chief Counsel
(571) 312-4400 ext. 7005
cohenj@apointl.org

Mark S. Reddish
Senior Counsel
(571) 312-4400 ext. 7011
reddishm@apointl.org

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¹⁶ 47 U.S.C. § 151.

CERTIFICATE OF SERVICE

I, Nicole M. Zimbelman, government relations counsel at the Association of Public-Safety Communications Officials-International, Inc., hereby state that true copies of the foregoing REPLY TO CONSOLIDATED OPPOSITION OF HIGHER GROUND LLC were sent by U.S. Mail, March 16, 2017 to the attached Service List.

/s/

Nicole M. Zimbelman

SERVICE LIST

Adam Krinsky, Esq.
Wilkinson Barker Knauer LLP
1800 M Street, NW
Suite 800N
Washington, DC 20036
Counsel for Higher Ground LLC

Michele C. Farquhar
Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Counsel to AAR

Robert S. Reis
President
Higher Ground, LLC
2225 E. Bayshore Road
Suite 200
Palo Alto, CA 94303

AJ Burton
Director, Federal Regulatory Affairs
Frontier Communications
1800 M Street, NW Suite 800N
Washington, DC 20036

Robert S. Koppel
Lukas, Nace, Gutierrez & Sachs, LLP
7300 Greensboro Drive
Suite 1200
McLean, VA 22102
Counsel to Mimosa, Inc.

Pamila Gist
Lukas, Nace, Gutierrez & Sachs, LLP
7300 Greensboro Drive
Suite 1200
McLean, VA 22102
Counsel to Pioneer Cellular

Nebraska Public Power District
PO Box 608
York, NE 68467

Attn: Dale Shaw
TOPAZ Regional Wireless Cooperative
c/o City of Mesa Communications Dept
PO Box 1466
Mesa, AZ 85211-1466

Jeffrey L. Sheldon, Esq.
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, NW
Suite 900
Washington, DC 20037
Counsel for Southern Services, Inc.

Randy Thompson
Communications Administrator
City of Mesa Arizona
PO Box 1466
Mesa, AZ 85211-1466

Vince Krog
State Radio Engineer
Office of Enterprise Technology Services
1177 Alakea Street
Room 201
Honolulu, HI 96813

George Kizer
President
National Spectrum Management Association
PO Box 528
Englewood, NJ 07631

Brett Kilbourne
Vice President & Deputy General Counsel
Utilities Technology Council
1129 20th Street, NW
Suite 350
Washington, DC 20036

Susan H. Crandall
Associate General Counsel
Intelsat Corporation
7900 Tysons One Place
McLean, VA 22101

Tiffany West Smink
CenturyLink
1801 California Street
10th Floor
Denver, CO 80202

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive
Suite 1200
McLean, VA 22102
Counsel to Enterprise Wireless Alliance

Jonathan Morgan
GMRS - Radio System Manager
City of Garland
1639 Commerce Street
Garland, TX 75040

Cheng-yi Liu
Mitchell Lazarus
Fletcher, Heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Arlington, VA 22209
Counsel for Fixed Wireless
Communications Coalition