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Office of Engineering and Technology
Federal Communications Commission
Attn. Douglas Young

Re: Air-Tel, LLC, File No. 0238-CN-EX-2018
Response to Ref. No. 43153

Dear Mr. Young:

This firm represents Air-Tel, LLC (“Air-Tel”) with respect to the above-referenced experimental application now pending before the Office of Engineering and Technology (“OET”). This letter responds to the OET’s e-mail inquiry, Ref. No. 43153, dated July 19, 2018.

Although OET characterizes an unlawful *ex parte* letter from CTIA as an “objection” to the grant of Air-Tel’s application, a review of the involved CTIA letter (which Air-Tel retrieved from ELS after being alerted by OET to the letter’s existence) reveals that CTIA does not oppose the grant of Air-Tel’s application. Rather, CTIA only asks “that the Commission inquire further into Air-Tel’s plans” before granting the application. In issuing its e-mail inquiry, Ref. No. 43153, the OET has acceded to CTIA’s request and made the further inquiry.

CTIA Is Not a Party and Has No Right to Participate Herein

CTIA does not allege standing, or that it would be injured by a grant of the Air-Tel application, or that it has any statutory right to participate in this matter. Moreover, the filing of an unlawful *ex parte* letter does not create such a right on the part of CTIA to participate herein.

The CTIA letter is a blatant violation of Section 1.1208(a) of the Commission’s Rules – the “*ex parte*” rule – and as such the OET should have ignored it and should not now consider it. Indeed, the Commission in Section 1.1208(a) provides an “example” of prohibited conduct, which example reads as follows (emphases added):

After the filing of an uncontested application or waiver request, the applicant or other filer would be the sole party to the proceeding. The filer would have no other party to serve with or give notice of any presentations to the Commission, and such presentations would therefore not be “*ex parte* presentations” as defined by §1.1202(b) and would not be prohibited. On

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the other hand, in the example given, **because the filer is a party, a third person who wished to make a presentation to the Commission concerning the application or waiver request would have to serve or notice the filer.** Further, once the proceeding involved additional “parties” as defined by §1.1202(d) (e.g., an opponent of the filer **who served the opposition on the filer**), the filer and other parties would have to serve or notice all other parties.

Since CTIA declined to serve Air-Tel, CTIA is not a “party” as defined in Section 1.1202 of the Commission’s Rules, and Air-Tel is not obligated to serve this response upon CTIA. Moreover, pursuant to Section 1.1212(d) of the Commission’s Rules, the CTIA letter is “not made part of the record of the proceeding to which the presentations pertain.”

Air-Tel’s Purpose in Seeking This Experimental Authorization Is Legitimate

Air-Tel explicitly said in its application herein that it seeks to explore the viability of this spectrum for broadband operations, as opposed to radiolocation. Air-Tel did so in part, because the Commission is proposing to re-allocate this spectrum to broadband service. Air-Tel has a pending petition for reconsideration with respect to its current permanent radiolocation license, but that proceeding is irrelevant to this experimental application seeking to explore using the spectrum for broadband applications.¹

No matter what the outcome of Air-Tel’s other matter, pending before the Wireless Bureau, Air-Tel has in inventory substantial stock of Cambium equipment, which, as CTIA noted, is compatible with delivery of broadband services. More importantly, if the Commission ultimately decides to re-allocate the spectrum below 3.65 GHz to broadband service, the Commission almost certainly will certify this Cambium equipment for use in the newly-allocated band, in which case, Air-Tel would be able to enter the broadband field using its existing equipment inventory. Therefore, obtaining this experimental authorization and determining appropriate emission bandwidths and speeds is critical for Air-Tel’s future.

Air-Tel’s radiolocation license, WQLX454, authorizes Air-Tel to operate in Arizona, Colorado, Florida, Idaho and Utah. If Air-Tel were using the experimental licensing system to replicate its radiolocation operations, Air-Tel would be seeking experimental locations in all those states. However, Air-Tel is herein only seeking experimental authorization in Colorado; Air-Tel is in no way seeking to misuse the experimental licensing system or to replicate its radiolocation authority.

Air-Tel Seeks Nothing Different Than What the OET Already Granted to CTIA Members

¹ CTIA implies that Air-Tel holds only its radiolocation license, but that is false. Air-Tel also holds Public Coast licenses, WPOJ527 and WPOJ528, neither of which is the subject of any Commission proceeding.

Indeed, Air-Tel herein seeks nothing different than what CTIA's two largest dues-paying members – AT&T and Verizon – have already sought and obtained from OET! *See, e.g.*, Call Sign WJ2XBE (Verizon); Call Sign WI2XWD (AT&T); WI2XWI (AT&T). CTIA seeks to delay the grant of Air-Tel's experimental authority only so its controlling members can obtain a head-start over Air-Tel. If experiments in using this spectrum for broadband purposes are legitimate when conducted by CTIA's members, then such experiments are equally legitimate when conducted by an entity such as Air-Tel. In fact, the CTIA letter has all the hallmarks of a sham pleading, interposed in bad faith for the sole purpose of delay, conduct which in this case also constitutes a violation of the antitrust laws by CTIA and its members.²

Discussion of Testing Operations and Who Will Use the Equipment

Air-Tel's testing operations will be limited to the specified Colorado locations, with Air-Tel in control of the base station equipment and the user equipment. Although Air-Tel intends to utilize some of its existing Public Coast subscribers in its experimental operations, in order to better gauge real-world user experience, Air-Tel will not be charging for the provision of broadband service. Air-Tel also intends to provide user equipment to its managers and employees in the Colorado area. To repeat, this will be broadband service, not radiolocation.

Current broadband operations in the 3.65-3.7 GHz band are generally limited to narrower bandwidths, such as 10 MHz or 20 MHz. Air-Tel wants to determine how the potential for wider bandwidths, if there is 150 MHz of available spectrum instead of 50 MHz, could potentially alter speed and reliability of service. Air-Tel wants to learn, among other things, whether this spectrum and this equipment might be viable for mobile broadband, or only for fixed broadband.

This knowledge will be critical for Air-Tel to determine whether to participate in potential future broadband auctions for this spectrum, and if so, how much to bid in any given area. That is precisely why Verizon and AT&T sought and obtained their respective experimental licenses.

Conclusion

Accordingly, Air-Tel respectfully requests that OET immediately grant Air-Tel's application and allow Air-Tel to commence conducting the same kind of experiments that CTIA's members are already conducting, and for the same purpose as CTIA's members are conducting such experiments.

Very truly yours,
Rini O'Neil, PC

/s/
David J. Kaufman

cc: Air-Tel, LLC

² *See, e.g., California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508 (1972).