

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

In the Matter of)
)
Petition for Waiver to Allow Deployment of) GN Docket No. 18-357
Intelligent Transportation System Cellular)
Vehicle to Everything (C-V2X) Technology)

To: Chief, Office of Engineering and Technology
Chief, Wireless Telecommunications Bureau

**COMMENTS OF
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”) hereby comments on the 5GAA Petition for Waiver (“Petition”) in which the 5G – Automobile Association (“5GAA”) seeks permanent, nationwide, exclusive access to 20 megahertz of spectrum in the 5850-5925 MHz band (“5.9 GHz band”).¹

The Commission should dismiss or deny the Petition for both procedural and substantive reasons. Procedurally, the Petition seeks to initiate a new proceeding regarding use of the 5.9 GHz band when the Commission already has an open proceeding to consider changes to the 5.9 GHz band rules. Granting the Petition, which seeks to assign the 5905-5925 MHz portion of the band for nationwide access using only cellular vehicle-to-everything (“C-V2X”) service, would

¹ *Public Notice*, “Office of Engineering and Technology and Wireless Telecommunications Bureau Seek Comment on 5GAA Petition for Waiver to Allow Deployment of Cellular Vehicle-to-Everything (C-V2X) Technology in the 5.9 GHz Band,” DA 18-1231 (rel. Dec. 6, 2018). The deadlines for filing Comments and Reply Comments were subsequently extended to January 18, 2019 and February 5, 2019, respectively. *See Public Notice*, “Office of Engineering and Technology and Wireless Telecommunications Bureau Extend Comment Cycle Deadlines on 5GAA Petition for Waiver to Allow Deployment of Cellular Vehicle-to-Everything (C-V2X) Technology in the 5.9 GHz Band,” DA 18-1310 (rel. Dec. 31, 2018). The filing deadline for Comments was ultimately extended to February 8, 2019 as a consequence of the partial Federal government shutdown and subsequent resumption of normal operations. *See Public Notice*, “Revisions to Filing and Other Deadlines Following Resumption of Normal Commission Operations,” DA 19-26 (rel. Jan. 29, 2019). Accordingly, these Comments are timely filed.

essentially pull the rug out from underneath that proceeding in favor of one focused solely on 5GAA's technology and use case. Substantively, the Petition and the impending petition for rulemaking that 5GAA indicates it will file would mark a return to an outdated spectrum policy that allocated spectrum mandating a single technology or a single use case in contravention to the flexible use policy that is the hallmark of current spectrum policy. In fact, it is the Commission's decision in 1999 to allocate the 5.9 GHz band to Dedicated Short Range Communications ("DSRC") that led to massive non-use of the band and stymied innovation, leading to the ongoing proceeding to consider other uses of the band. By dismissing or denying the Petition, the Commission can avoid the same outcome.

The Commission should put the brakes on 5GAA's efforts to hijack a significant portion of the 5.9 GHz band for permanent and exclusive C-V2X use. Instead, should 5GAA desire to participate, the Commission can consider C-V2X use in the context of the Further Notice of Proposed Rulemaking in ET Docket No. 13-49 that WISPA and others have requested.²

Introduction

WISPA has been a strong advocate for balanced spectrum policy that includes a combination of licensed and unlicensed spectrum that can be used for deployment of access to fixed wireless broadband service. As examples, WISPA supported the three-tier spectrum access model the Commission adopted for the Citizens Broadband Radio Service that includes both licensed and "license by rule" spectrum.³ In the 2.5 GHz band, WISPA is urging the Commission to auction unassigned spectrum for licensed use.⁴

² See Letter from Claude Aiken, WISPA President & CEO, to Marlene H. Dortch, FCC Secretary, ET Docket No. 13-49 (filed Oct. 26, 2018) ("WISPA 2018 Letter"); Letter from Rick Chessen, NCTA, to Marlene H. Dortch, FCC Secretary, ET Docket No. 13-49 (filed Oct. 16, 2018) ("NCTA 2018 Letter").

³ See Comments of WISPA, GN Docket No. 12-354 (filed Feb. 20, 2013); Reply Comments of WISPA, GN Docket No. 12-354 (filed Apr. 5, 2013); Comments of WISPA, GN Docket No. 12-354 (filed Dec. 5, 2013); Reply Comments of WISPA, GN Docket No. 12-354 (filed Dec. 20, 2013); Comments of WISPA,

In the 5 GHz band, WISPA has advocated for access to additional spectrum for unlicensed use. WISPA was a proponent of allocating the 5150-5250 U-NII-1 band for outdoor use,⁵ and its members have made extensive use of that band segment since the FCC's rules became effective in 2014.⁶ More recently, WISPA has joined other stakeholders in seeking access to all or a portion of the 5.9 GHz band for unlicensed uses.⁷ As WISPA stated in 2016, "it is essential that the Commission make its final decision consistent with the significant underlying record in this proceeding, which overwhelmingly supports the beneficial and continued roll-out of next-generation Wi-Fi and other unlicensed broadband services in the 5 GHz band."⁸

That statement is just as true today. Just a few months ago, WISPA joined NCTA in asking the Commission to adopt a Further Notice of Proposed Rulemaking to "refresh the record" in ET Docket No. 13-49, stating that:

as consumers use more and more bandwidth and the 5 GHz U-NII band becomes more and more congested, there is substantial and increasing demand for additional unlicensed spectrum to support other objectives. In particular, the availability of up to 75 megahertz of spectrum immediately adjacent to the 5 GHz U-NII band and the 6 GHz band where unlicensed use is contemplated will be extremely useful for higher-EIRP rural fixed wireless broadband deployments. WISPA's members have made extensive and intensive use of the 5 GHz band, which is used to serve millions of consumers that lack other alternatives to terrestrial broadband in their homes, farms, and businesses. Equipment can be easily adapted to operate in the 5.9 GHz band and quickly deployed.⁹

GN Docket No. 12-354 (filed July 14, 2014); Reply Comments of WISPA, GN Docket No. 12-354 (filed Aug. 15, 2014). *See also* Comments of WISPA, ET Docket No. 10-123 (filed Apr. 22, 2011).

⁴ *See* Comments of WISPA, WT Docket No. 18-120 (filed Aug. 8, 2018); Reply Comments of WISPA, WT Docket No. 18-120 (filed Sept. 7, 2018).

⁵ *See, e.g.*, Comments of WISPA, ET Docket No. 13-49 (filed May 28, 2013); Reply Comments of WISPA, ET Docket No. 13-49 (filed July 24, 2013).

⁶ *See Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, 29 FCC Rcd 4127 (2014).

⁷ *See* Comments of WISPA, ET Docket No. 13-49 (filed July 7, 2016).

⁸ *Id.* at 2.

⁹ WISPA 2018 Letter at (footnote omitted).

Commissioners O’Rielly and Rosenworcel have made statements that recognize the need to enable more intensive use of the 5.9 GHz band. As Commissioner Rosenworcel recently observed, autonomous and connected vehicles have largely moved to newer, market driven alternatives, and “[i]t is time to take a fresh look at this band to allow a broader range of uses.”¹⁰ Commissioner O’Rielly agreed, stating that it “is pure folly to believe that DSRC will ever work as envisioned” and that “the Commission should quickly reexamine the 5.9 GHz band for repurposing.”¹¹

Discussion

I. THE PETITION SHOULD BE DISMISSED OR DENIED BECAUSE IT IS PROCEDURALLY INFIRM

The Commission should dismiss or deny the Petition because it seeks to achieve by waiver that which should be considered in the context of an ongoing rulemaking proceeding. The Commission already has an open proceeding to consider rules for the 5.9 GHz band. On June 1, 2016, the Commission’s Office of Engineering and Technology (“OET”) released a public notice describing a three-phase test plan to consider the extent to which unlicensed devices could share the 5.9 GHz band with DSRC systems.¹² Just a few months ago, on October 18, 2018, OET requested comment on its Phase I testing report.¹³ And, as discussed above, both NCTA and WISPA have asked the Commission to refresh the record in ET Docket No. 13-49 in light of the test report and the demand for more unlicensed spectrum. 5GAA’s submission of

¹⁰ Statement of Commissioner Jessica Rosenworcel on the 5.9 GHz Band (rel. Oct. 16, 2018), *available at* <https://docs.fcc.gov/public/attachments/DOC-354588A1.pdf> (last visited Jan. 25, 2019).

¹¹ Statement of Commissioner Michael O’Rielly on NCTA 5.9 GHz Letter (rel. Oct 16, 2018), *available at* <https://docs.fcc.gov/public/attachments/DOC-354589A1.pdf> (last visited Jan. 25, 2019).

¹² *Public Notice*, The Commission Seeks to Update and Refresh the Record in The “Unlicensed National Information Infrastructure (U-NII) Devices in The 5 GHz Band” Proceeding, ET Docket No. 13-49, 31 FCC Rcd 6130 (2016).

¹³ *Public Notice*, Office of Engineering and Technology Requests Comment on Phase I Testing of Prototype U-NII-4 Devices, ET Docket No. 13-49, DA 18-1111 (rel. Oct. 18, 2018).

Reply Comments in response to this latest public notice demonstrates its awareness of the issues and its interest in the proceeding;¹⁴ its filing of the Petition veers off the road and attempts to divert the Commission’s attention away from a proceeding that has been ongoing for nearly six years. To the extent that there have been “two significant developments” since OET announced the test plan in 2016,¹⁵ that is an issue to be considered upon the Commission’s adoption of the Further Notice that NCTA and WISPA have requested.

Further, by its terms, the Petition seeks 20 megahertz of spectrum in the 5.9 GHz band for C-V2X, without any proposed limitation in duration or geographic area.¹⁶ In fact, the Petition does not even propose that 5GAA file Form 601 and submit filing fees, or that the Commission consider eligibility requirements,¹⁷ compliance with certain operating and technical standards and other Part 90 or Part 95 rules,¹⁸ or alternatives that would better serve the public interest while the Commission considers spectrum sharing.¹⁹

5GAA also states that DSRC operations would be prohibited from operating in the 5905-5925 MHz segment of the band, but it ignores the rights of existing licensees to operate their registered facilities, on a non-exclusive basis, on those frequencies. The Commission’s Universal Licensing System indicates that there are 93 active “IQ” and “QQ” licenses authorized to operate on these frequencies, dozens of which are licensed to local governments and authorities such as the State of New Hampshire, the California Department of Transportation Office of Radio Communications, the New York State Thruway Authority, the City of New

¹⁴ Reply Comments of 5GAA, ET Docket No. 13-49 (filed Dec. 13, 2018).

¹⁵ *Id.* at 1.

¹⁶ *See* Petition at Appendix D.

¹⁷ *See* 47 C.F.R. § 90.33 and 47 C.F.R. § 90.35.

¹⁸ *See, e.g.*, 47 C.F.R. § 90.371(b) (restricting operations within 75 kilometers of certain locations without NTIA coordination).

¹⁹ 5GAA could have filed an application for an experimental authorization for a discrete geographic area where no licensees are currently authorized and operations would be secondary.

York, the Golden Gate Bridge Highway and Transportation District, Santa Clara County, California and Maricopa County, Arizona. But 5GAA blithely ignores these existing incumbents, simply stating that “operations will be prohibited from operating in these frequencies”²⁰ without even mentioning the existence of registered locations or suggesting alternatives that might accommodate the needs of incumbent licensees to the extent they have deployed facilities. Although there is no question that the 5.9 GHz band is significantly underutilized, the rights of those few incumbent licensees that have deployed service must nevertheless be considered in the context of the requested waiver.

5GAA has not met the “good cause” test necessary for approval of the Petition.²¹ Its failure to address incumbent interests makes manifest the problems inherent in blanket waiver authority for nationwide use of a new technology. The Commission should not require licensees to suddenly change lanes so 5GAA can gain the permanent, nationwide authority it seeks. Rather than having its hands tied and its consideration of the 5.9 GHz band compromised, the Commission should promptly dismiss or deny the Petition, and defer 5GAA’s arguments to the pending proceeding in which 5GAA is already a participant.

II. THE COMMISSION SHOULD NOT AUTHORIZE A SINGLE TECHNOLOGY OR USE CASE FOR THE 5.9 GHz BAND

If it were to grant the Petition despite the procedural flaws discussed above, the Commission would be taking a U-turn on its modern spectrum policy approach. Such action would essentially repeat the Commission’s unfortunate 1999 decision to authorize DSRC as the

²⁰ Petition at Appendix D.

²¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

only permissible technology in the 5.9 GHz band, a decision that paved the way for significant under-utilization of the band.²² To quote NCTA:

After nearly twenty years, despite being granted exclusive spectrum and being heavily subsidized by the government, incumbent DSRC services remain largely in the pilot phase. And as the Department of Transportation noted in its recent guidance, other vehicle safety and commercial technologies are actively being developed by the industry today. These market-driven alternatives are on the verge of overtaking DSRC in the marketplace, but even those that rely on spectrum lack the authority to operate in the 5.9 GHz band because of its unusually specific allocation to DSRC technology.²³

This passage suggests at least two critical points. First, mandating a specific technology for the licensed band has contributed to significant underutilization of the band. Second, at the same time, unlicensed use of bands with no prescribed technology or use case have flourished, including V2X.

Over the past several years, the Commission has learned from experience the significant deficiencies of mandating the use of specific technologies when allocating spectrum, instead favoring in recent years a “flexible use” approach that gives licensees and users the ability to offer the services that they choose.²⁴ The Commission has adopted the “flexible use” approach

²² See *Amendment of Parts 2 and 90 of the Commission’s Rules to Allocate the 5.850-5.925 MHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services*, 14 FCC Rcd 18221 (1999).

²³ NCTA 2018 Letter at 3-4.

²⁴ See, e.g., *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, 27 FCC Rcd 16102,16112 (2012) (“the rules we adopt today represent the Commission’s efforts to make more spectrum available for *terrestrial flexible use*, including for mobile broadband, in the public interest, without imposing undue restrictions on the use of the spectrum.”) (emphasis added); *Service Rules for Advanced Wireless Services H Block - Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, 28 FCC Rcd 9483, 9484 (2013) (“Today we increase the Nation’s supply of spectrum for *flexible-use services*, including mobile broadband.”) (emphasis added); *Promoting Interoperability Order in the 700 MHz Commercial Spectrum*, 28 FCC Rcd 15122, 15134 (“the Commission *adopted a flexible use approach* to allow for fixed and mobile services, along with ‘broadcast and other broadband applications that could include two-way interactive, cellular, and mobile television broadcasting services.’”) (emphasis added); *Reallocation and Service Rules for the 698-746 MHz Spectrum Band*, 17 FCC Rcd 11613, 11615 (2002) (“By taking these steps, we seek to promote the transition to DTV, meet our statutory mandate to reclaim

to avoid mandating specifically “which services to offer and what technologies to deploy” in a particular band.²⁵ Looking forward, the Commission is considering “flexible use” in the 3700-4200 MHz band, proposing “to license this spectrum under our flexible-use, Part 27 rules that permit licensees to provide any fixed or mobile service consistent with the allocations for this spectrum, subject to rules necessary to prevent or minimize harmful interference.”²⁶ The Commission should take this same road in considering how to promote more intensive use of the 5.9 GHz band.

In a September 2018 speech, Commissioner Rosenworcel addressed the future of the 5.9 GHz band, stating “[t]here is no shame in correcting course ... I think it’s time to be ambitious and find a way forward that puts the 5.9 GHz band to fuller use.”²⁷ However, mandating C-V2X technology would, like the Commission’s ill-fated decision in 1999, send the 5.9 GHz band the wrong way down a one-way street – and would do so outside the required rulemaking process. The Commission should not double down on technology mandates that have proven to be unsuccessful and which contravene modern spectrum policies that have created enormous innovation and economic welfare, especially for unlicensed services such as those offered by WISPA’s members.

and license this spectrum by competitive bidding, and *enable the flexible use of the Lower 700 MHz Band for a wide range of new services.*”) (emphasis added).

²⁵ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Eighteenth Report, 30 FCC Rcd 14515, 14550 (2015).

²⁶ *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, 6959 (2018).

²⁷ Remarks of Commissioner Jessica Rosenworcel, Silicon Flatirons Conference, Boulder, Colorado (Sept. 6, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-353982A1.pdf> (last visited Jan. 25, 2019).

Conclusion

The Commission should dismiss or deny 5GAA's Petition to avoid repeating the history of unsuccessful technology mandates that have led to 20 years of underutilized spectrum. Instead, the Commission should promptly adopt a Further Notice of Proposed Rulemaking in ET Docket No. 13-49 to consider the means by which the band can be shared with innovative unlicensed uses.

Respectfully submitted,

**WIRELESS INTERNET SERVICE
PROVIDERS ASSOCIATION**

By: /s/ Claude Aiken
Claude Aiken
President & CEO
4417 13th Street #317
Saint Cloud, Florida 34769

Stephen E. Coran
Lerman Senter PLLC
2001 L Street, NW, Suite 400
Washington, DC 20036
(202) 416-6744
Counsel to the Wireless Internet Service Providers Association

February 8, 2019