

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Facilitating Shared Use in the 3100-3550)	WT Docket No. 19-348
MHz Band)	AU Docket No. 21-62
)	

REPLY COMMENTS OF AT&T SERVICES, INC.

AT&T Services, Inc., on behalf of itself and its affiliates (collectively “AT&T”), respectfully submits these reply comments in the above-referenced proceeding, in which the Commission seeks comment on Lockheed Martin Corporation’s (“Lockheed”) request for waiver of Sections 5.5 and 5.84 of the Commission’s rules, which prohibit experimental licensees from causing harmful interference to other authorized operators.¹ Lockheed asserts that a waiver is necessary to protect its operations in the 3.45-3.55 GHz band at its testing facilities in Cazenovia, NY and Liverpool, NY, which are outside of any Cooperative Planning Area (“CPA”).² It requests consideration of the Waiver Request prior to the opening of the application filing window for Auction 110.

Recognizing the importance of the 3.45-3.55 GHz spectrum for 5G deployments, the Commission has worked expeditiously to make the spectrum available for flexible use. AT&T commends the Commission for its decision to pursue exclusive licensing, to permit operations at full commercial power, and to auction the spectrum as quickly as possible. As CTIA has

¹ *Wireless Telecommunications Bureau and Office of Engineering and Technology Seek Comment on Lockheed Martin Corporation Request for Waiver of Certain Experimental Radio Service Rules*, Public Notice, DA 21-539, WT Docket No. 19-348, AU Docket No. 21-62 (rel. May 7, 2021).

² *See* Waiver Request of Lockheed Martin, WT Docket No. 19-348, AU Docket No. 21-62, at 1-2 (filed Apr. 29, 2021) (“Waiver Request”).

explained, the Waiver Request threatens to undermine the Commission’s efforts, injecting uncertainty into the band for prospective licensees and infringing upon the rights and protections the Commission has reserved for primary flexible use licensees.³ For the reasons discussed below, the Waiver Request should be denied.

First, grant of the Waiver Request would undermine the important policy objectives of the Part 5 experimental licensing rules. The bedrock principle of the Commission’s experimental licensing system is that experiments may occur only if they do not cause harmful interference to any station operating in accordance with the Table of Frequency Allocation.⁴ As the Commission has emphasized, experimental licensees must operate on a “non-exclusive, non-harmful interference basis to authorized spectrum users.”⁵ Accordingly, the Commission has historically granted experimental licensees limited rights, subject to cancellation by the Commission at any time, without the need for notice or a hearing.⁶

The Waiver Request would turn this regime on its head, effectively elevating an experimental licensee to primary status in the band. New, flexible use licensees would be unprotected from harmful interference from Lockheed’s high-power radars and would be unable to operate in the areas and times of Lockheed’s testing. Such a result would mark a radical

³ See Opposition of CTIA, WT Docket No. 19-348, AU Docket No. 21-62, at 2-3 (filed May 17, 2021) (“CTIA Opposition”).

⁴ See 47 C.F.R. § 5.84; *Promoting Expanded Opportunities for Radio Experimentation and Market Trials under Part 5 of the Commission’s Rules and Streamlining Other Related Rules*, Report & Order, 28 FCC Rcd 758, 788 n.150 (2013) (“A basic tenet of our experimental licensing program is that an experiment may not cause harmful interference.”).

⁵ *In the Matter of Spectrum Horizons*, Notice of Proposed Rulemaking and Order, 33 FCC Rcd 2438, 2466 ¶ 64 (2018).

⁶ See *In the Matter of Facilitating Shared Use in the 3100-3550 MHz Band*, Second Report & Order, Order on Reconsideration, and Order of Proposed Modification, FCC 21-32, WT Docket No. 19-348 (rel. Mar. 18, 2021) (“*Second Report & Order*”); CTIA Opposition at 4-6.

departure from the Commission’s long-standing approach to experimental licensing and would set a dangerous precedent for experimental licensees to expand their spectrum rights.⁷ Worse, it would contravene the Commission’s central goal of helping “future licensees deploy their [5G] networks quickly,” so that the spectrum is used “in service of the American people.”⁸ Lockheed acknowledges that its experiments have been successful under the current experimental licensing framework and offers no reason why its rights should be expanded beyond its current authorization at this time.⁹ The Commission should not permit such a sweeping expansion of an experimental licensee’s rights.

Second, grant of the Waiver Request threatens to unravel the Commission’s carefully crafted CPA regime. With unprecedented speed, the Commission has collaborated with its federal partners to develop a coordination regime that “minimize[s] the impacts from incumbent federal operations on future commercial operations while still enabling effective federal operations where and when necessary.”¹⁰ To this end, the National Telecommunications and Information Administration (“NTIA”) and the Department of Defense (“DoD”) have identified 33 CPAs, limited in size and scope, where new flexible-use licensees must coordinate with federal incumbents to facilitate shared use of the band.¹¹ As the Commission notes, the DoD

⁷ Lockheed fails to identify any prior cases in which the Commission has granted the interference protection rights it seeks to experimental licensees. The cases Lockheed does cite are unavailing. *See* Waiver Request at 12-14. Indeed, “none of the instances cited involve[] elevating experimental licenses, which operate solely on a non-interference basis.” *Id.* at ¶ 34, n. 115. *See also* CTIA Opposition at 4 (explaining that Lockheed’s request is unprecedented).

⁸ *Second Report & Order* at ¶ 1.

⁹ *See* Waiver Request at 2.

¹⁰ *Second Report & Order* at ¶ 21.

¹¹ *See id.* at ¶¶ 22-23, 27.

“has expended significant time and resources to craft limited [CPAs] and Periodic Use Areas that maximize new commercial operations.”¹²

Granting the Waiver Request would have the effect of multiplying the number of CPAs in the band, upending important work the Commission and its federal partners have done to establish reasonable coordination areas. Under the current framework, CPAs will already limit 5G deployments in a number of partial economic areas (“PEAs”), covering approximately 22% of the population. Setting a precedent of extending interference protection rights to experimental licensees like Lockheed would greatly expand these zones and frustrate 5G deployment efforts. As the record in this proceeding makes clear, it is critical that the areas carved out for protection under the coordination framework be as narrowly defined and clearly communicated as possible.¹³ Grant of the Waiver Request would do precisely the opposite: it would invite expansion of coordination areas and inject uncertainty for potential bidders as they prepare to participate in the upcoming auction.¹⁴

Third, the Commission already considered this issue and declined to extend the protections that Lockheed seeks. The Commission expressly considered whether to protect non-Federal experimental licensees, including aerospace and defense contractors like Lockheed.¹⁵ Recognizing that doing so “would create uncertainty for potential bidders considering

¹² *Id.* at ¶ 34.

¹³ *See, e.g.*, Comments of CTIA, WT Docket No. 19-348, at 7-12 (Nov. 20, 2020); Comments of Ericsson, WT Docket No. 19-348, at 9 (Nov. 20, 2020); Reply Comments of Verizon, WT Docket No. 19-348, at 15-16 (Dec. 7, 2020); Reply Comments of AT&T, WT Docket No. 19-348, at 12-15 (Dec. 7, 2020); Comments of AT&T, AU Docket No. 21-62, at 10 (Apr. 14, 2021).

¹⁴ It would also contradict the Commission’s commitments to ensure that CPAs will not be increased in size and to prevent new CPAs from being “added in the contiguous United States.” *Second Report & Order* at ¶ 27.

¹⁵ *Id.* at ¶ 34.

commercial deployments in the band,” the Commission declined to provide additional protections for experimental operations in the band.¹⁶ Instead, the Commission indicated that it expects future flexible-use licensees “to cooperate with Part 5 licensees when presented with requests for experimentation and testing” so as “to enable continued development and upgrades of essential DoD systems.”¹⁷ This approach strikes the appropriate balance between the important goals of promoting commercial 5G deployments and enabling critical DoD operations.

As CTIA explains, the Waiver Request offers no new evidence that warrants reconsidering the Commission’s well-reasoned decision.¹⁸ Lockheed may continue its existing operations pursuant to its experimental license. When new flexible-use licensees are authorized to operate in the band, Lockheed can negotiate with those licensees to develop and implement a coordination framework that meets the parties’ needs.¹⁹ AT&T shares the Commission’s view that limited proposals with reasonable parameters will be accommodated on a case-by-case basis between the ultimate 3.45 licensee and the requesting experimental licensee. To the extent the experimental licensee feels that the experimental licensing regime could not sufficiently protect its planned operations, it could enter into a leasing arrangement, subject to appropriate waivers, with the licensee to permit its testing. The Commission should stay the course and “monitor the results” of the coordination approach it has already prescribed.²⁰

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See* CTIA Opposition at 7-10. *See also* Comments of T-Mobile USA, Inc., WT Docket No. 19-348, AU Docket No. 21-62, at 2-3 (filed May 17, 2021).

¹⁹ *Second Report & Order* at ¶ 145 (“[W]e expect future licensees to negotiate with experimental authorization applicants, consistent with the regulatory status afforded primary users versus experimental licenses under our rules.”).

²⁰ *Id.* at ¶ 34.

Finally, the Waiver Request fails to meet the Commission’s rigorous standards for waiver grant. Waivers are not routinely granted and requests face “a high hurdle even at the starting gate.”²¹ The Commission may grant a waiver request if: (i) the underlying purpose of the rule in question would not be served or would be frustrated by application to the case and grant is in the public interest; or (ii) special circumstances would make application of the rule inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²²

The Waiver Request fails to meet these standards. As noted above, grant of the Waiver Request would undermine the basic tenet of the experimental licensing regime: that experimental licensees must operate on a non-interference basis. More broadly, Lockheed fails to identify special circumstances that would make application of the rules inequitable, unduly burdensome, or that it has no reasonable alternative to the waiver.²³ Indeed, the *Second Report & Order* expressly outlines a reasonable alternative to the waiver by setting forth an expectation that flexible-use licensees will cooperate with critical Part 5 licensees to develop mutually agreeable interference solutions where necessary. Lockheed has not shown that following this process would be inequitable or unduly burdensome or even that the process would not yield its desired outcome. Instead, it raises speculative concerns that the process is “unlikely to lead to a mutually agreeable outcome.”²⁴ Lockheed’s concerns are premature. There is no reason why its needs cannot be addressed through negotiations with flexible-use licensees.

²¹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²² 47 C.F.R. § 1.925(b)(3).

²³ *See* CTIA Opposition at 9-10.

²⁴ Waiver Request at 7.

The Commission has made important strides in this proceeding to unleash 100 megahertz of mid-band spectrum for 5G deployment and innovation. Granting the Waiver Request would undermine some of this progress and frustrate commercial deployments in the band. It would also impermissibly expand the spectrum rights of experimental licensees, eroding the bedrock principles of the Commission's long-standing experimental licensing regime. The Commission should not revisit its carefully crafted coordination approach and jeopardize Auction 110's success. Consistent with the *Second Report & Order*, Lockheed's needs can be addressed through negotiations with flexible-use licensees. AT&T agrees with CTIA and T-Mobile that the Waiver Request should be denied.

Respectfully submitted,

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