

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Petition of)	
)	
American Hotel & Lodging Association,)	Docket No. <u>RM-11737</u>
Marriott International, Inc., and)	
Ryman Hospitality Properties.)	
)	

To The Consumer and Governmental Affairs Bureau

COMMENTS OF Majdi S. Abbas

I oppose the petition of AH&LA, Marriott, and Ryman (hereafter, 'Petitioners.')

Petitioners have requested a rulemaking proceeding to amend the Commissions Part 15 rules to exempt their operation of Wi-Fi equipment from 47 USC § 333, or, failing that, a declaration from the Commission that their willful interference with other authorized users of the spectrum is not actually willful interference.

This Petition was filed under the guise of Petitioner's request for "clarity" regarding the rules application to unlicensed services authorized under Part 15. The problem with this demand is two-fold: First, that the plain language text of the law in question is quite clear: "No person shall... cause interference to any radio communications of any station licensed or authorized by or under this chapter...." And second, as this petition is an obvious outgrowth of the Enforcement Bureau's recent

action against Petitioner Marriott, one which was settled with that Petitioner by consent decree, they can hardly subsequently claim that they are unaware of both the text of the statute, and the Commissions interpretation thereof. Petitioners Marriott and Ryman, despite their claim, are *not* uncertain of the meaning of 47 USC § 333 and its applicability to them; they simply do not *like* it.

Petitioners then go on to contradict themselves by claiming that both “Part 15 devices are not ‘licensed’ nor were they specifically ‘authorized by or under’ the Communications Act at the time Section 333 was enacted” and that “the Commission’s Part 15 rules had been in place long before Congress enacted Section 333.”

Since Part 15 dates to 1938, it certainly existed, and was part of the body of the Communications Act that Congress contemplated and revised in 1990. While Congress may not have specifically discussed Part 15 in the context of the revision, if they intended to exempt Part 15 authorized devices from the revision, they would have done so. It is not for the Commission to do it for them.

Petitioners then proceed on a couple of tangents, trying to both argue that only the Part 15 harmful interference standard applies, and invoking the spectre of the OTARD rules. Neither of these arguments appears compelling.

While I do not dispute Petitioners right to manage their own networks, their rights to public access, unlicensed spectrum stop where they infringe on the rights of consumers or other third parties operating their own networks using certified equipment in full compliance with Part 15.

Petitioners state “Without the ability to address RF interference, hotel guests would almost invariably experience unreliable Wi-Fi performance, spotty coverage, and dropped connections.” Sadly, this is simply a fact of life when operating in unlicensed, uncoordinated spectrum.

It appears as if Petitioners want the protection that the use of licensed, coordinated spectrum provides, without bearing the costs of either licensing or coordination. They propose shifting these costs onto the public by forcing consumers to purchase access to their unlicensed network, while denying consumers access to networks they have already paid to access.

If the 2.4GHz ISM band, or 5GHz U-NII spectrum is not exclusive enough for Petitioners, nothing today prevents them from registering a nationwide Part 90 license in the 3.65GHz band, coordinating their fixed facilities, and leasing or loaning adapters to their customers, or working with manufacturers to get this hardware into commodity devices. This would be a comparatively low cost approach, yet grant them the greater degree of exclusivity they claim to require.

There is, however, one interesting point that Petitioners raise. They state: "As far as Petitioners are aware, the FCC has authorized these types of network management equipment pursuant to its equipment authorization rules."

If, as they allege, the equipment sold to them as certificated, permits willful interference to third party networks in violation of the Commissions rules, the Enforcement Bureau should open an investigation, and determine the degree to which said vendors, or their TCBs, have certified ineligible devices under Part 15.

It is also not clear that a proceeding, should it grant the Petitioners the relief they desire, would enable the operations they have engaged in in the past, and are clearly continuing to contemplate. To "de-authenticate" a wireless station from an SSID it is attached to, their equipment must generate a wireless Ethernet frame directed to their Access Point, that purports to be from the client station they would like to disconnect.

To the degree that the MAC address of the station, is used as a credential to deauthenticate it from the BSSID in question, such operation may intentionally violate

the Computer Fraud and Abuse Act of 1986, 18 USC § 1030 (a) (4), and/or relevant state statutes.

18 USC § 1030 (a) (4) reads: “knowingly and with intent to defraud, accesses a protected computer without authorization.” A “protected computer” is defined as “which is used in or affecting interstate or foreign commerce or communication.” This provision has been long upheld by Federal courts to cover Internet-connected computer systems.

After all, Petitioners propose accessing a third party network and masquerading as a station of that network, in order to prevent authorized access of that network, and drive traffic to their own paid services. This falsehood, combined with their fiscal interest in the outcome, could well constitute fraud.

Finally, Petitioners’ property rights are not being infringed; they are free to (and even admit as such) ban or regulate the use of mobile and computing devices on their properties, and enforce those regulations through civil means with their customers.

For all of the foregoing reasons, and more, the Petition should be denied.

Respectfully submitted,



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