

February 13, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Notice of Ex Parte Communications, RM No. 11737

Dear Ms. Dortch:

On February 11, 2015, Harold Feld of Public Knowledge (PK), and Michael Calabrese of the Open Technology Institute of New America Foundation (OTI) (collectively PK/OTI), spoke with Julius Knapp, chief of the Office of Engineering and Technology (OET), along with Bruce Romano, Mark Settle and Patrick Donovan of OET. PK/OTI met separately with Renee Gregory, advisor to Chairman Wheeler. On February 12, PK/OTI met with Priscilla Argeris, advisor to Commissioner Rosenworcel. At all three meetings, PK/OTI made the following statements relevant to the above captioned proceeding.

The Commission should not dismiss the Petition filed by Marriott or close the above captioned docket. If the Commission does dismiss the Petition, it should dismiss the Petition with Prejudice. As an initial matter, Marriott has failed to file an actual *motion* to request that the Commission dismiss the pleading. Marriott filed its Petition as a formal request for declaratory ruling or, in the alternative, request for rulemaking under Rule 1.2¹ and 1.402.² Both rules require that parties follow the Commission’s standard pleadings practice. This is particularly true where the action by the Commission (dismissal of the Petition) is subject to Commission discretion.

This is not merely a matter of procedural niceties, although the Commission should have some concern to maintain the integrity of its procedural rules. Marriott has not indicated whether it seeks to have its Petition dismissed with prejudice or without prejudice.³ This is a critical point, given Marriott’s insistence throughout this proceeding – including its letter stating (rather than

¹ 47 C.F.R. §1.2.

² 47 C.F.R. §1.402.

³ See Letter Benette L. Ross, counsel to Petitioners, to Marlene H. Dortch, Secretary, Federal Communications Commission, January 30, 2015 (“*Withdrawal Letter*”).

requesting permission) to withdraw its request – that Marriott continues to believe that it has the right to employ jamming technology as a matter of “cybersecurity.”

It is clear from recent news stories covering Marriott’s petition, and Marriott’s repeated statements in response to these press stories, that Marriott is seeking to withdraw its Petition solely as a public relations matter. Marriott should not be allowed to withdraw its Petition now, only to file it again later at some future date when it thinks it can win the public relations battle. As the Commission’s rules make clear, the Commission has a responsibility to prevent the filing of repetitious petitions.

Marriott must acknowledge on the record that it has not right to jam WiFi. Marriott continues to insist that Section 333 does not apply to unlicensed devices operating under Part 15, or that there exists some kind of “cybersecurity” exception to Section 333. Even in its most recent letter, Marriott makes clear it believes it has both the right and responsibility to continue to jam devices that it believes might constitute a “threat” to its wireless network. Only a clear pronouncement by the full Commission, either by dismissal with prejudice or by resolving the Petition and providing the needed guidance can ensure that Marriott will not continue to jam WiFi.

If the Commission dismisses the Petition without prejudice, it should resolve the question presented on its own motion pursuant to Rule 1.2. The Commission may, on its own motion, issue a declaratory ruling to resolve uncertainty.⁴ It is clear from the record in this case, and from the reaction to the Commission’s most recent enforcement announcement as reported in the trade press,⁵ that there continues to exist confusion over whether parties may legally jam WiFi or other Part 15 devices – either by overwhelming receivers or via transmission of de-authentication packets. The matter is made more urgent as several hoteliers, manufacturers and operators of networks filed in this proceeding to support Marriott and share Marriott’s opinion that because Section 333 does not apply to Part 15 “unlicensed” devices, or because of some imagined “cybersecurity” exception to Section 333, and have echoed Marriott’s request for guidance.⁶ As these manufacturers are including the same de-authentication technology in the devices they sell and manage for providers, it is extraordinarily likely that jamming will continue (albeit in a less high-profile manner) unless the Commission provides clear guidance on the appropriate use of de-authentication over wireless transmission.

⁴ 47 C.F.R. §1.2(a).

⁵ See Monica Allevan, “Wi-Fi Blocking Rules Apply to Hospitals, Too, FCC Says,” Fierce WirelessTech (February 9, 2015). Available at: <http://www.fiercewireless.com/tech/story/wi-fi-blocking-rules-apply-hospitals-fcc-says/2015-02-09>

⁶ See, e.g., Comments of Hilton Worldwide Holdings, Inc.; Comments of Smart City Networks, LP; Comments of Aruba Networks and Ruckus Wireless.

Indeed, the US Telecom Association, representing all major local exchange carriers, argued in its comments that the issue presented is “well suited to a declaratory ruling” as “considerable controversy and significant uncertainty exists regarding the proper interpretation of Section 333 as well as the appropriate interplay with the Commission’s Part 15 rules.”⁷ It is noteworthy that USTA is at odds with to other major trade organizations, CTIA and NCTA, which reach the opposite conclusion.

Where the largest hotel chains, the largest trade associations of network operators, and numerous equipment manufacturers come to different conclusions as to the applicability of Section 333, it is clear that a controversy exists requiring the Commission to issue a definitive statement of policy.

Finally, this uncertainty does not merely pose a risk to unlicensed use. To the extent Marriott and the equipment providers justify their exemption from Section 333 on the grounds of cybersecurity, such an exemption would extend to licensed wireless networks as well. As the Commission has repeatedly noted, permitting widespread jamming would interfere with critical communications and public safety services. Failure to resolve this question here, where it is clearly presented, will only encourage further private jamming despite the issuance of explicit Bureau enforcement notices.

In accordance with Section 1.1206(b) of the Commission’s rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/ Harold Feld
Senior Vice President
PUBLIC KNOWLEDGE

cc: Priscilla Argeris
Renee Gregory
Julius Knapp
Bruce Roman
Mark Settle
Patrick Donovan

⁷ USTA Comments at 1.