

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment to Commission Rules Concerning )  
Adjudication of Spectrum Interference Disputes ) RM-11750  
)

Comments of ITIF

ITIF appreciates this opportunity to file comments in support of the petition urging the Federal Communications Commission (FCC or the Commission) to investigate ways in which it can improve and assist private negotiations and streamline interference dispute resolution.<sup>1</sup> ITIF applauds the efforts of the Samuelson-Glushko Technology Law & Policy Clinic (TLPC) and J. Pierre de Vries for raising these issues and commends the Commission for considering their recommendations. We at ITIF have long supported efforts to further liberalize spectrum management and see these proposals as a welcomed step in that direction.<sup>2</sup>

With the general historic trend of ever more intensive use of spectrum, radio services will have to be packed ever closer together in time, space, and frequency. This trend will require coordination of an increasing diversity of services, services that may well have different waveforms, different (and sometime conflicting) business models, and different levels of familiarity with regulatory processes. The number of interference disputes is likely to increase over time. A key question is to what extent the coordination required to minimize the impact of interference incidents will continue be done

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<sup>1</sup> . Samuelson-Glushko Technology Law & Policy Clinic & J. Pierre de Vries, In the Matter of Amendment to Commission Rules Concerning Adjudication of Spectrum Interference Disputes, Petition for Rulemaking, RM-11750 (May 8, 2015).

<sup>2</sup> . See Richard Bennett, "Spectrum Policy for Innovation," ITIF (Sept. 13, 2011), *available at* <http://www.itif.org/publications/2011/09/13/spectrum-policy-innovation>; Robert D. Atkinson & Douglas Brake, *Comments to U.S. House of Representatives Committee on Energy and Commerce Spectrum Policy and a Comm Act Update Whitepaper*, ITIF (Apr. 25, 2014), *available at* <http://www2.itif.org/2014-spectrum-white-paper-comments.pdf>.

through a process of centralized planning or through a new regime of decentralized negotiation and Coasian bargaining.

When undertaken between commercial wireless operators, direct negotiation over spectrum use is legally sanctioned and already a common occurrence.<sup>3</sup> The fact that these negotiations are common and only infrequently require Commission intervention is noteworthy for number of reasons.

First, it shows that there is real value to be discovered by spectrum users “on the ground.” Engineers working day-to-day on bordering systems are able to find mutually-beneficial efficiencies that couldn’t be conceived of at the assignment stage. Second, it exposes more formal FCC processes—such as rebanding, re-assignment or changes to the services rules—as not always right for the task. The Commission should be looking to promote this sort of decentralized efficiency discovery process the in the context of the TLPC petition for an expanded role for FCC administrative law judges.

Contrasting with these streamlined negotiations is the Commission’s current process for resolving large-scale interference disputes: the “informal” rulemaking process. This process is at best cumbersome and at worst inhibits innovative new services from entering the market altogether. An expanded role of administrative law judges should aim to cut down on opportunities for delay and rent-seeking behavior. By encouraging beneficial negotiation, and offering a low-cost backstop should disagreements break down, the Commission can begin transitioning to a more decentralized, efficient use of spectrum resources.

But, when it comes to the success of commercial mobile operators in negotiating over spectrum use, there are relatively few parties involved, with similar equipment and similar businesses. These companies are “repeat players” in these negotiations; they understand each other well and have little reason to disrupt the process. This may not always be the case when interference arises between different services. The availability of simple mechanisms could streamline resolution of spectrum contentions that lie somewhere between the easy cases of wireless operators and the hard cases of large-scale interference to operations affected with the public interest.

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<sup>3</sup> . See Dorothy Robyn, *Making Waves: Alternative Paths to Flexible Use Spectrum*, Aspen Institute Communications and Society Program, 14-15, (July 2015), *available at* <http://www.aspeninstitute.org/sites/default/files/content/docs/pubs/Making-Waves.pdf> (in which Charla Rath of Verizon notes, “You [can] negotiate rights at the borders—that you can use your neighbor’s spectrum, [that] they can use yours.... If you talk to our engineers, they’re doing [this] constantly.... We rarely go to the FCC [for] help.... It’s just part of a normal negotiation we do.”).

Obviously there are a number of challenges to a wholesale shift to negotiation of spectrum rights and adjudication of interference disputes. Indeed, the specific proposal presented by the TLPC is relatively limited in scope, focusing on opening up an ALJ process for “small bilateral disputes.” But it is important these suggestions be read as stepping-stones in the context of a broader set of policy proposals put forth by Pierre de Vries and Phil Weiser.<sup>4</sup>

One challenge, identified by de Vries and Weiser and referenced in the petition, is in the vague definition of “harmful interference.”<sup>5</sup> It may be difficult for an ALJ to make principled decisions without a more rigorous understanding of what constitutes harmful interference, but that should not stop progress in exploring a narrow expansion of mechanisms that have already proven quite useful.

The FCC likely already encourages parties to work together to bring agreed-upon solutions to the table. An ALJ option rule or a similar mechanism should be adopted to institutionalize and clarify this process and serve as an incremental step to much broader reform.

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<sup>4</sup> . See J. Pierre de Vries and Philip J. Weiser, “Unlocking Spectrum Value through Improved Allocation, Assignment, and Adjudication of Spectrum Rights,” The Hamilton Project, Brookings (March, 2014), *available at* [http://www.hamiltonproject.org/files/downloads\\_and\\_links/THP\\_DeVries-WeiserDiscPaper.pdf](http://www.hamiltonproject.org/files/downloads_and_links/THP_DeVries-WeiserDiscPaper.pdf).

<sup>5</sup> . See *Id.*; see also FCC Technological Advisory Council: Receivers and Spectrum Working Group, “Interference Limits Policy: The use of harm claim thresholds to improve the interference tolerance of wireless systems (Feb 6, 2013), *available at* <https://transition.fcc.gov/bureaus/oet/tac/tacdocs/WhitePaperTACInterferenceLimitsv1.0.pdf>.