

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the Matter of)
)
Amendment of Parts 2, 15, and 97)
of the Commission's Rules to Permit)
Use of Radio Frequencies Above 40 GHz)
for New Radio Applications)

ET Docket No. 94-124
RM-8308

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION FOR LEAVE TO FILE OPPOSITION

The Millimeter Wave Communications Working Group ("MWCWG"), by its attorneys, respectfully requests that the Commission grant it leave to file the attached Opposition responding to the Petition of Reconsideration for the Third Report and Order filed by Harmonix Corporation on August 27, 1998.¹

The MWCWG is an open industry organization formed in response to the Second Notice of Proposed Rulemaking in this proceeding, whose purpose was to develop a "spectrum etiquette" for the 59-64 GHz general unlicensed band. The MWCWG was the principal proponent of a millimeter wave allocation devoted exclusively to unlicensed devices and it has strongly supported the Commission's decision to create such a band at 59-64 GHz.² The MWCWG's work formed the basis for the rules that are challenged in the Harmonix petition.

Consideration of the attached opposition would serve the public interest. The petition reflects a fundamental misunderstanding of the rules governing operation within the 59-64 GHz unlicensed band as well as a lack of appreciation for the ends those rules were designed to promote. It therefore would benefit the Commission's review to have the MWCWG clarify the intent and application of the rules.

In addition, the petition itself suffers from a procedural flaw. Harmonix is attempting to raise on reconsideration facts that were not previously presented to

¹ On September 14, 1998, New England Digital Distribution ("NEDD") submitted a letter to the Commission stating that it had attempted to submit a petition for reconsideration in August but that its petition had been addressed improperly and, therefore, returned. In its September 14 letter, NEDD asked that its petition be considered by the Commission. The attached Opposition responds to the NEDD petition, if the Commission grants NEDD's request.

² First Report and Order and Second Notice of Proposed Rule Making, ET Docket No. 94-124, 11 FCC Rcd 4481 (1995).

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the Commission but, notwithstanding the requirements of Section 1.429(b) of the Commission's rules, has made no showing to justify its failure to raise its concerns in comments.³

The MWCWG regrets that it missed noting the Harmonix petition and, therefore, did not respond to it in a timely fashion. The MWCWG reviews the docket sheet for ET Docket No. 94-124; that docket sheet referred to the Harmonix filing as a letter rather than a petition for reconsideration. As a result, the MWCWG did not examine the Harmonix filing or give it further consideration. While this may not excuse the MWCWG's failure to take note of the public notice listing the Harmonix petition, the MWCWG believes that it does explain the reason for its error and demonstrate that this error in no way undermines its ongoing commitment to this proceeding.

In light of the fact that the petition has not yet been acted upon by the Commission, the MWCWG submits that any inconvenience to the petitioner or to the Commission staff caused by the MWCWG's delay is more than outweighed by the public interest benefits of basing the Commission's consideration on a complete set of facts and an accurate analysis of the rules.

³ The NEDD petition also suffers from this flaw and, in addition, was late-filed.

For the above reasons, the MWCWG respectfully requests leave to file the attached opposition.

Respectfully submitted,

MILLIMETER WAVE COMMUNICATIONS
WORKING GROUP



/s/ Henry Goldberg

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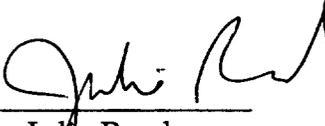
February 22, 1999

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was sent by first-class mail, postage prepaid, this 22nd day of February, 1999, to each of the following:

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