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RECEIVED  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

July 6, 2000

**BY HAND DELIVERY**

Ms. Magalie Salas, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

**Re: ET Docket No. 99-231, Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices — Ex Parte Filing**

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, on behalf of the Wireless Ethernet Compatibility Alliance (WECA), I am filing the original and one copy of this written ex parte communication in the above-referenced proceeding. WECA is an association of product vendors that certifies products for interoperability with the IEEE 802.11 spread spectrum wireless LAN standard.

The Notice in this proceeding proposed the use of a Gaussian interferer for determining the receiver jamming margin of a direct sequence spread spectrum system.<sup>1</sup>

At least one filing has asked the Commission to eliminate altogether the presently-permitted CW jamming margin test in favor of the proposed Gaussian test.<sup>2</sup>

<sup>1</sup> Amendment of Part 15 of the Commission's Rules Regarding Spread Spectrum Devices, 14 FCC Rcd 13046, 13050 at para. 14 (1999) (Notice of Proposed Rule Making) ("Notice").

<sup>2</sup> Reply Comments of Proxim, Inc. and Micrilor, Inc. at 2-4 (filed Nov. 19, 1999).

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That action is outside the scope of the Notice, and hence would constitute a violation of the Administrative Procedure Act.<sup>3</sup>

Fairly read, the Notice proposed only to add the Gaussian interferer test as an alternative to the CW test, not to replace it. The proposed rule not only contemplates continued application of the CW test, but expressly identifies the Gaussian test as an alternative:

For systems that employ a spreading rate less than 10 chips/symbol the results of the **CW jamming margin test** described in paragraph (2) must be supported by a separate mathematical calculation of system processing gain. **Alternatively**, processing gain may be determined by using the jamming margin test procedure described in paragraph (2), except that the interfering signal used must be Gaussian noise.<sup>4</sup>

Although the text of the Notice quotes some manufacturers as suggesting the Gaussian test is "more suitable," and tentatively concludes the Gaussian test is "likely to give a more accurate measure," the Notice then goes on to "permit" the Gaussian test.<sup>5</sup> An unstrained reading of this passage merely offers the manufacturer the choice of which test to apply. Nowhere does the Notice mention, or even hint at, elimination of the CW test.

Nor would elimination of the CW test constitute a permitted "logical outgrowth" of the Notice.<sup>6</sup> A final rule is not a logical outgrowth "when the changes are so major that the original notice did not

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<sup>3</sup> WECA's first inkling that the Commission might even consider such an action came in a casual remark by a Commission staff member at a recent meeting on a different topic.

<sup>4</sup> Notice, 14 FCC Rcd at 13052, Appendix B, 47 C.F.R. Sec. 15.247(e)(3) (proposed) (emphasis added).

<sup>5</sup> Notice, 14 FCC Rcd at 13050, para. 14.

<sup>6</sup> See Omnipoint Corp. v. FCC, 78 F.3d 620, 631 (D.C. Cir. 1996) ("In deciding whether a second round of comment is required, this Court looks to see 'whether the final rule promulgated by the agency is a "logical outgrowth" of the proposed rule,' " citing American Water Works Ass'n. v. EPA, 40 F.3d 1266, 1274 (D.C. Cir. 1994).

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adequately frame the subjects for discussion."<sup>7</sup> Here, the straightforward language of the proposed rule makes clear that elimination of the CW test is **not** part of the proposal. Against that specificity, a few vague and ambiguous words in the text hardly constitute adequate notice for an informed and productive debate.

In addition, the proposal relating to the Gaussian test is itself inadequate to support a rule. As WECA and other noted earlier in the proceeding, the proposed test is described in barely a sentence, with no technical detail at all.<sup>8</sup> The defining parameters of the Gaussian noise source are not given. No test set-up or procedure is specified. There is no guidance on how to convert test readings to an estimate of processing gain. The Commission has floated an idea, but it has not yet proposed a rule.<sup>9</sup>

Before the Commission can adopt a Gaussian interferer test, it must give public notice of the proposed test in sufficient detail to permit meaningful comment. And before it can eliminate the CW jamming test, it must fairly give notice of that proposal.

To accommodate these concerns while expediting a resolution of the proceeding, the Commission could forego a full-scale Further Notice of Proposed Rulemaking in favor of a simple (but specific) Public Notice in the Federal Register that provides for comment and reply periods of perhaps 30 and 15 days respectively. These are the shortest periods in which the parties can reasonably analyze and respond to a highly technical proposal. Alternatively, the Commission could bifurcate the proceeding and advance to a decision on the issues that have been fully briefed.

Kindly date-stamp and return the extra copy of this letter.

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<sup>7</sup> Omnipoint Corp. v. FCC, 78 F.3d at 631-32, *citing Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n*, 673 F.2d 525, 533 (D.C. Cir.), *cert. denied*, 459 U.S. 835 (1982).

<sup>8</sup> Notice, 14 FCC Rcd at 13050, para. 14.

<sup>9</sup> 5 U.S.C. § 553(b)(3). *See Home Box Office, Inc. v. FCC*, 567 F.2d 9, 55 (D.C. Cir. 1977) (notice of proposed rulemaking must provide sufficient information to permit "adversarial critique"), *cert. denied*, 434 U.S. 829 (1977). *Accord, American Medical Ass'n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995) ("Notice of a proposed rule must include sufficient detail on its content and basis in law to allow for meaningful and informed comment"); Connecticut Light and Power Co. v. Nuclear Regulatory Comm'n, 637 F.2d 525, 530-31 (D.C. Cir. 1982) ("An agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary") (footnote omitted), *cert. denied*, 459 U.S. 835 (1982).

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If there are any questions about this filing, please call me at the number above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Lazarus". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Mitchell Lazarus  
Counsel for the  
Wireless Ethernet Compatibility Alliance

cc: Service List  
Mr. Jim Zyren, Wireless Ethernet Compatibility Alliance

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