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WIRELESS TELECOMMUNICATIONS BUREAU OPENS FILING WINDOW FOR PROPOSALS TO DEVELOP AND MANAGE INDEPENDENT DATABASE OF SITE REGISTRATIONS BY LICENSEES IN THE 71-76 GHZ, 81-86 GHZ AND 92-95 GHZ BANDS

(WT Docket No. 02-146)

By this Public Notice, the Wireless Telecommunications Bureau ("WTB" or "Bureau") solicits proposals from commercial entities interested in developing and managing an independent database of site/link registrations by FCC licensees in the 71-76 GHz, 81-86 GHz and 92-95 GHz bands. The Bureau will accept proposals beginning March 15, 2004, and ending March 26, 2004. Proposals will be available for public inspection, and the Bureau will consider any comments filed beginning March 29, 2004, and ending April 2, 2004.

Background information. On October 16, 2003, the Commission adopted a *Report and Order* establishing service rules to promote non-Federal development and use of the "millimeter wave" spectrum in the 71-76 GHz, 81-86 GHz and 92-95 GHz bands¹ on a shared basis with Federal Government operations.² These bands are essentially undeveloped and available for use in a broad range of new products and services, including high-speed, point-to-point wireless local area networks and broadband Internet access.³ Highly directional, "pencil-beam" signal characteristics permit systems in these bands to be engineered in close proximity to one another without causing interference. Thus, the Commission adopted a flexible and innovative regulatory framework for the 71-95 GHz bands that would not require traditional frequency coordination among non-Federal users. Under this approach, the Commission will issue an unlimited number of non-exclusive, nationwide licenses to non-Federal Government entities for the 12.9 GHz of spectrum allocated for commercial use.⁴ These

¹ Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands, WT Docket No. 02-146, *Report and Order*, 18 FCC Rcd 23318 (2003) (*Report and Order*) (*recon. pending*). In the *Report and Order*, the Commission adopted rules for both unlicensed (Part 15) and licensed (Part 101) use of portions of these bands; the instant public notice concerns licensed use of the bands, which involves all of the bands except for 100 megahertz of spectrum at 94.0-94.1 GHz. For convenience only, we refer to the licensed spectrum herein as "the bands" or "the 71-95 GHz bands"; such references do not include 94.0-94.1 GHz. See *infra* note 4. On February 23, 2004, The Wireless Communications Association International, Inc., filed a petition for reconsideration of certain aspects of the *Report and Order*. That petition will be handled by separate order, and the issuance of this Public Notice is not intended to prejudge or resolve any of the issues raised by petitioners.

² In the context of spectrum management, "Federal Government" refers to use by the Federal Government and "non-Federal Government" refers to use by private entities and state and local governments. See *Report and Order*, 18 FCC Rcd at 23319 n.3.

³ For a brief description of important propagation characteristics of these frequency bands and their potential uses, see Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands, WT Docket No. 02-146, *Notice of Proposed Rule Making*, 17 FCC Rcd 12182, 12185-87 (2002).

⁴ The 71-76 GHz, 81-86 GHz and 92-95 GHz bands are allocated to both Federal Government and non-Federal Government users on a co-primary basis, except the 94.0-94.1 GHz portion, which is allocated for Federal Government use on a primary basis. See generally *Report and Order*, 18 FCC Rcd at 23322-31.

licenses will serve as a prerequisite for registering individual point-to-point links in a third-party database to be developed and managed by one or more third-party database managers ("Database Managers") selected in response to this or subsequent Public Notices.⁵

The 71-95 GHz bands are allocated on a shared basis with Federal Government users. Therefore, a licensee will not be authorized to operate a link under its nationwide license until the link is both (1) coordinated with the National Telecommunications and Information Administration (NTIA) with respect to Government operations and (2) registered as an approved link.⁶

NTIA coordination. Initially, NTIA coordination will occur using the existing process: licensees will file registrations on the FCC's Universal Licensing System (ULS), which the FCC will refer to NTIA's Interdepartment Radio Advisory Committee (IRAC) Frequency Assignment Subcommittee. However, NTIA is developing an automated coordination mechanism that will allow non-Federal users and Database Managers selected by the FCC to use an Internet site to determine whether a given non-Federal link has any potential conflict with Federal users.⁷ Once NTIA's Web-based system is operational, it is anticipated that Database Managers will be supplying the necessary information directly to NTIA for frequency interference coordination with Federal Government entities. The automation is designed to streamline the administrative process for non-Federal users in the bands.⁸

Link registration through Database Managers. Until the Commission selects Database Managers, registration will occur through ULS (the Bureau will issue a separate public notice announcing the start date for licensing and link registration procedures). Thereafter, Database Managers will be required to register each link and maintain a record of the requested and approved links for each licensee to assist parties in planning new links to avoid interference. In the event of an interference dispute, rights with regard to specific links will be established based on the date and time of link registration. Database Managers will not be responsible for assigning frequencies, but will be responsible for establishing and maintaining the database as described in detail in the *Report and Order* and summarized below. This does not preclude Database Managers from offering additional services, such as frequency coordination, which will assist a licensee in designing a link.

Database Manager duties and responsibilities. Pursuant to the *Report and Order*, the Database Managers will be required to:

- develop, manage and use a single link registration database—to be shared with all Database Managers if WTB selects more than one during this filing window or in the future—which will serve as a clearinghouse and repository of current and historical link information for all registered non-Federal Government links;

⁵ The Commission stated that the ultimate decision of the number of Database Managers and the selection of such Managers would be made by WTB, and noted that the Bureau would announce its manager selection procedures by public notice. See *Report and Order*, 18 FCC Rcd at 23341 ¶ 51.

⁶ See, e.g., 47 C.F.R. §§ 101.147(z) (sites may not operate until NTIA approval is received); 101.1511 (authorization will be granted upon proper application filing and link coordination in accordance with the Commission's rules); 101.1523 (sharing and coordination among non-Federal Government licensees and between non-Federal Government licensees and Federal Government services).

⁷ Notice, Establishment of a Frequency Assignment Coordination Web Site, National Telecommunications and Information Administration, 68 FR 74218 (Dec. 23, 2003).

⁸ See *id.* The classified nature of some Federal Government operations precludes the use of a public database containing both Federal Government and non-Federal Government links. See *Report and Order*, 18 FCC Rcd at 23340 ¶ 48.

- make all Database Manager services available to all parties on a first-come, first-served and non-discriminatory basis;⁹
- ensure that non-Federal Government links are coordinated with Federal Government operations through NTIA's planned automated coordination mechanism, and promptly notify the licensee when a link submission receives a green- or yellow-light response from NTIA;¹⁰
- verify that individual link registrations are compliant with Part 17 of our rules and, if required, properly registered on the Commission's Antenna Structure Registration Database;
- update the link registration database based on FCC actions on ULS affecting licenses in these bands, such as registration deletion, or license expiration, renewal, transfer or assignment;
- add or delete link information to the database based upon review and processing of link submissions from licensees on a non-discriminatory, first-come, first-served basis;
- withdraw unconstructed and deleted links from the database, modify the database when it is determined that a licensee has not met construction and loading requirements, and maintain documentation of such actions (with notice to WTB for links also registered in ULS);¹¹
- maintain a complete and accurate history of all links;
- administer the formal interference protection procedures, based upon "first-in-time" information recorded in the database;¹²
- provide NTIA, FCC and all interested parties access to the database at all times;
- establish, at a minimum, the following report capabilities/utilities for NTIA and FCC:
 - ability to query on basic link elements such as licensee name, FCC call sign, registration number, transmit coordinates and transmit frequency or frequency band;
 - ability to query and retrieve all link registrations associated with a specific licensee or FCC call sign;
 - ability to retrieve all link registrations within a specified geographic area;
 - ability to retrieve all link registrations filed or accepted within a specified time period;
 - ability to retrieve or request a report of all links removed or deleted from the database within a specified time period;
 - provide automated interface or reports as required by NTIA to allow them to maintain an accurate and complete database;
 - upon request, a complete download of the registration database in a format specified by FCC;
 - ability to provide other reports to NTIA and FCC and respond to information requests as necessary;

⁹ See *Report and Order*, 18 FCC Rcd at 23340 ¶ 50. Database Managers may set fee structures associated with such services as necessary to recoup costs. Database Managers also will be permitted to offer optional services to licensees, such as coordination analysis of proposed links with prior-registered links. See *id.* at 23340-41 ¶¶ 50-51.

¹⁰ A "green light" response will indicate that the link is coordinated with the Federal Government; a "yellow light" response will indicate a potential for interference to Federal Government or certain other operations. See generally 47 C.F.R. § 2.106 (US388, US389). In the case of a "yellow light," the licensee must file an application for the requested link with the Commission, which in turn will submit the application to the IRAC for individual coordination. See *Report and Order*, 18 FCC Rcd at 23341-43 ¶¶ 52, 54, 58.

¹¹ See *id.* at 23350 ¶¶ 80-81.

¹² See *id.* at 23343 ¶ 58 (once notified of an interference complaint, Database Manager must identify the problem link and notify the later-registered licensee that it must accept or resolve (as applicable) any identified interference immediately).

- enter into a Memorandum of Understanding (MOU) with the United States Government memorializing its duties and responsibilities, and agreeing to serve a five-year term, which could be renewed by the Commission.

Each entity proposing to serve as a Database Manager is required to familiarize itself with the Commission's rules and policies pertaining to these frequency bands, including but not limited to those contained in or referenced by the Commission under WT Docket No. 02-146, including the *Report and Order*, which is available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-248A1.pdf or may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, 202-863-2893. Such entities are further advised that certain of the rules and policies adopted in the *Report and Order* are the subject of a petition for reconsideration pending before the Commission.¹³

Database Manager proposals. Proposals received outside the March 15-26, 2004, filing window will be deemed rejected and will not be considered. Each proposal must include:

- a reference to this public notice and WT Docket No. 02-146;
- the name and a description of the entity proposing to be a database manager, and a description of its qualifications;
- a description of measures the applicant will take to:
 - accept registration filings and maintain the database as specified in this public notice;
 - ensure registrations are properly coordinated with Federal Government operations;
 - ensure antenna registration and compliance with Part 17;
 - update the database to reflect link registrations that have lost protection rights;
 - provide public access to the link registration database;
 - otherwise meet the requirements set forth in this *Public Notice*;
- how it will ensure that link information is added to or deleted from the database (based upon review and processing of link submissions from licensees) on a non-discriminatory, first-come, first-served basis;
- a description of security measures the applicant will take to safeguard database information, including off-site data back-up facilities and measures to ensure continuity of access to the database in the event its operations are interrupted;
- a description of the query capabilities and reports the applicant proposes to provide to the Commission and NTIA;
- a certification that the applicant will be able and willing to work with other Database Managers should WTB decide to designate more than one;
- how it will prevent any conflicts of interest, including but not limited to link registrations relative to any entity that is affiliated directly or indirectly with the Database Manager (or clients/customers of same); alternatively, certify and agree that neither it nor any affiliates will be licensees;
- a description of optional services it intends to offer, including specifically whether it intends to offer coordination services;
- its proposed timetable for testing, demonstration and operational launch of the database; and
- the name, address, telephone number and signature of a contact person familiar with the proposal.

¹³ See *supra* note 1.

Comments on proposals. Database Manager proposals will be available to the public.¹⁴ The Bureau will consider any comments filed beginning March 29, 2004, and ending April 2, 2004.

Filing instructions. Proposals and comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). EXCEPTION: Any material submitted with a request for non-disclosure pursuant to 47 C.F.R. § 0.459 must be filed by paper. Confidential filings are not permitted electronically.

- Proposals and comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/cgb/ecfs/>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, parties should include their full name, U.S. Postal Service mailing address, and WT Docket No. 02-146. Parties may also submit an electronic comment (but not a Database Manager proposal) by Internet e-mail. To get filing instructions for e-mail comments, a prospective commenter should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form." A sample form and directions will be sent in reply.
- Parties who choose to file by paper must file an original and six copies as follows:
 - The original and four of the copies must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The fifth copy should be addressed to the Commission's copy contractor, Qualex International, Room CY-B402, and the sixth copy to John Spencer, Broadband Division, Wireless Telecommunications Bureau, Room 3-A103.
 - Paper filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).
 - U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743.
 - The Commission's mail contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002.
 - The filing hours at this location are 8:00 a.m. to 7:00 p.m.
 - All hand deliveries must be held together with rubber bands or fasteners.
 - Any envelopes must be disposed of before entering the building.

Permit-but-disclose proceeding. Because of the policy implications and potential impact of this proceeding on persons not parties hereto, we believe it would be in the public interest to treat all proposals filed in response to this Public Notice as a single, permit-but-disclose proceeding under the *ex parte* rules, see 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to proposals, comments, or other issues involved herein will be allowed but must be disclosed

¹⁴ "[I]t is important for any person who submits materials which he wishes withheld from public inspection under 5 U.S.C. 552(b)(4) to submit therewith a request for non-disclosure pursuant to 47 C.F.R. § 0.459. If it is shown in the request that the materials contain trade secrets or commercial, financial or technical data which would customarily be guarded from competitors, the materials will not be made routinely available for inspection; and a persuasive showing as to the reasons for inspection will be required in requests for inspection submitted under 47 C.F.R. § 0.461. In the absence of a request for non-disclosure, the Commission may, in the unusual instance, determine on its own motion that the materials should not be routinely available for public inspection. Ordinarily, however, in the absence of such a request, materials which are submitted will be made available for inspection upon request pursuant to 47 C.F.R. § 0.461, even though some question may be present as to whether they contain trade secrets or like matter." 47 C.F.R. § 0.457(d)(2).

in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b). Permit-but-disclose *ex parte* procedures permit interested parties to make *ex parte* presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written *ex parte* presentation to the Commissioners or Commission employees must file the written presentation with the Commission's Secretary no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(1). Persons making oral *ex parte* presentations must file a summary of the presentation and deliver copies to the Commissioners or Commission employees involved with the presentation no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(2). All *ex parte* filings must be clearly labeled as such and must reference WT Docket No. 02-146 and the DA number of this public notice, DA 04-672.

Decision. WTB will base its decision on the information provided. Once an Order is released that designates one or more Database Managers, such designation(s) will take effect upon the execution by such Database Manager(s) and the WTB of a Memorandum of Understanding. Once a decision has been made and MOUs executed, the Bureau will announce by public notice the names and addresses of the selected Database Managers.

Further information. Questions regarding this Public Notice may be directed to John Spencer, Broadband Division, Wireless Telecommunications Bureau, 202-418-1896, TTY 202-418-7233.

By the Chief, Broadband Division, Wireless Telecommunications Bureau.

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