
Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Petition for Waiver of the Part 15 UWB) ET Docket No. 04-352
Regulations Filed by the Multi-band OFDM)
Alliance Special Interest Group)

To: The Commission

**REPLY TO OPPOSITION
TO PETITION FOR RECONSIDERATION**

CINGULAR WIRELESS LLC

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July 11, 2005

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Cingular Wireless LLC (“Cingular”) hereby replies to the WiMedia Alliance’s Opposition to the Petitions for Reconsideration filed by Cingular and the Satellite Industry Association concerning the *Order* in this proceeding.¹ The Opposition does not rebut Cingular’s showing that reconsideration is necessary.

First, Cingular showed in its petition that the “waiver” the Commission granted was so broad as to replace the standards established by rulemaking in the *UWB* proceeding, and that its doing so without engaging in rulemaking violated the Administrative Procedure Act² and evaded the requirements of the Congressional Review Act³ and the Regulatory Flexibility Act.⁴ The WiMedia Alliance expresses no view about whether the FCC was required to employ a rulemaking to grant the relief contained in the *Order*. Instead, it argues that the record supported the more limited waiver that had been requested by the WiMedia Alliance’s predecessor,⁵ and that the Commission could have granted several other forms of relief on the same record, any of

¹ *Waiver of the Part 15 UWB Regulations*, ET Docket 04-352, *Order*, FCC 05-58 (Mar. 11, 2005).

² 5 U.S.C. § 553.

³ 5 U.S.C. §§ 801-08.

⁴ 5 U.S.C. §§ 601-12.

⁵ The Multi-Band OFDM Alliance Special Interest Group (“MBOA-SIG”) has been absorbed into the WiMedia Alliance.

which would have been less extensive than what the Commission did in the *Order*.⁶ In other words, the WiMedia Alliance defends the lawfulness of a more limited order the Commission did not adopt, rather than the *Order* itself. It is irrelevant whether the record supported an order granting the waiver request, because the Commission's *Order* went much further and effectively rewrote the rules through a blanket waiver.

Second, Cingular demonstrated that the Commission's *Order* eviscerated the rules adopted in the UWB rulemaking through an unprincipled blanket waiver⁷ and could not be squared with the cautious, conservative approach that the Commission claimed to be following with respect to UWB. In fact, the *Order* explicitly departed from what it described as the “unnecessary level of conservatism” embodied in the rules adopted in the UWB rulemaking.⁸ Cingular showed that the waiver grant was premised on the use of a waveform that had never been considered in the rulemaking. The WiMedia Alliance does not contest any of these criticisms of the *Order*.

Third, Cingular showed that by “changing the way UWB power levels are measured, the Commission has effectively discarded the power (EIRP) limits adopted in that proceeding and replaced them with new, less conservative limits — as much as 6 dB higher, or more, depending on the duty cycle of the waveform.” The WiMedia Alliance does not take issue with this position.

⁶ See Opposition at 7-8.

⁷ The fact that the FCC extended the waiver well beyond what MBOA-SIG requested and made it available to all indicates that the FCC did not base its waiver on special circumstances in a particular case, as required by *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), and also demonstrates the total lack of any articulated, identifiable standards for its waiver of the rule, see *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166-67 (D.C. Cir. 1990).

⁸ *Order* at ¶ 13.

Finally, Cingular showed that reconsideration was necessary because the Commission had failed to address Cingular's technical arguments in response to the MBOA-SIG waiver request. The WiMedia Alliance does not take issue with this position, either.

In short, the WiMedia Alliance has little or nothing to say in defense of the Commission's *Order* in response to the Cingular petition for reconsideration. At best, it suggests that a more limited waiver would have been defensible — which effectively concedes that the broad waiver granted in the *Order* is indefensible. As in *Northeast*, “this waiver reflects an outrageous, unpredictable, and unworkable policy.”⁹ The *Order* must be vacated and the waiver rescinded.

Respectfully submitted,

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⁹ *Northeast*, 897 F.2d at 1167.

CERTIFICATE OF SERVICE

I, Donna M. Crichlow, certify that a copy of the foregoing “Reply to Opposition to Petition for Reconsideration” was served this eleventh day of July, 2005 by first-class U.S. mail to the following:

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