

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, DC 20554

In the Matter of

Amendment of Part 90 of the) RM No. 11604
Commission's Rules to Improve)
Interference Protection in the)
3650-3700 MHz Band)

To: The Commission

COMMENTS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP ("BloostonLaw"), on behalf of its clients that are existing and prospective licensees in the 3.65-3.70 GHz band, as shown in Attachment A hereto, hereby submits these comments in support of the rulemaking petition in RM 11604 ("Petition"), filed by the Fixed Wireless Communications Coalition ("FWCC").

The Commission's regulatory approach to the use of the 3.65-3.70 GHz band is somewhat novel. It eschews exclusive licensing and instead provides for shared licensing of the spectrum. It establishes, as a preliminary matter, nationwide registration by prospective users of the band and requires notifications to the Commission of site-specific operations which are then included in a publicly-available database. It anticipates that prospective users will use good judgment and will consult the database to determine the existence of other users in the area of proposed operation and will select frequencies out of the 50 MHz comprising the band that are most likely to result in interference-free operation. If interference should occur, it expects licensees to cooperate

in eliminating the interference. A further requirement for avoiding or minimizing interference mandates the use of equipment that incorporates a contention-based protocol, *i.e.*, a protocol that allows multiple users to share the same spectrum by defining the events that must occur when two or more transmitters attempt simultaneously to access the same frequency and establishing rules by which each device is provided reasonable access to the shared spectrum.

In establishing this regulatory approach, the Commission intentionally made things simple: it avoided formal frequency coordination, even between newcomers and existing users; and it provided for filing applications at any time without any filing windows or deadlines. Thus, it expected that users of the band, for their mutual benefit, would cooperate with each other in good faith in assuring interference-free operation. In the words of the Commission, “the rules involve minimum regulatory burdens to encourage multiple entrants and to stimulate the rapid expansion of broadband services.”¹

In an ideal world, the Commission’s regulatory scheme for licensing and operation in the 3.65-3.70 GHz band should work perfectly fine. The flaw is that some of the important rule provisions are merely advisory in nature, *i.e.*, they do not impose binding obligations on newcomers to make their frequency selections in a manner that is most likely to preclude interference; and, if interference should result, they simply advise, but do not require, licensees experiencing interference to cooperate in eliminating the problem.

¹ See *Wireless Operations in the 3650-3700 MHz Band*, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd 6502, at 6508, 6512 (2005).

The flaw in the licensing scheme came to the fore in *World Data PR Inc.*² There, an existing licensee in the 3.65-3.70 GHz band claimed that a newcomer operated transmitters in advance of the required notification to the Commission and without checking the database to determine the existence and location of incumbent licensees, failed to coordinate its operations with an existing licensee and failed to cooperate in resolving the resulting harmful interference. The Wireless Telecommunications Bureau (“Bureau”) resolved the dispute in favor of the newcomer, reiterating that prior coordination is not required in the rules and confirming that all licensees in the band have equal rights to the spectrum and that they should cooperate in avoiding and mitigating harmful interference.

While the Bureau’s decision may have been consistent with the rules as presently written (an issue which is presently before the full Commission on review),³ if the incumbent’s allegations are to be believed, the decision, in effect, allowed a newcomer to cause harmful interference to an existing licensee and then demand that the existing licensee modify its operations to eliminate or minimize the interference. No right-thinking business person can reasonably be expected to make the necessary investment in RF equipment and other facilities required to operate in the 3.65-3.70 GHz band with the knowledge that the Commission’s rules offer such little protection to that investment. Unless the rules are modified to afford more certainty in achieving interference-free operation, the utility of the band will continue to be open to question.

² Memorandum Opinion and Order, 24 FCC Rcd 14648 (WTB 2009).

³ See *Application for Review of Neptuno Networks*, Station WQJI716, File Nos. 0003959230 *et al.*, filed Jan. 21, 2010.

FWCC proposes a simple solution that BloostonLaw supports. It requests that the rules which are now merely advisory in nature be made mandatory. Thus, in Section 90.1319(d) of the rules, where prospective licensees are told that they “should” examine the licensee database and make every effort to minimize interference, FWCC would have the Commission substitute the word “must” for the word “should,” and would require that licensees “must” make every effort to ensure that their fixed and base stations operate at a location, and with technical parameters, that will minimize the potential to cause and receive interference (where such effort is currently, more or less, voluntary). Similarly, FWCC asks the Commission to change the last sentence of Section 90.1319(d) from: “Licensees of stations suffering or causing harmful interference **are expected to** cooperate and to resolve this problem by mutually satisfactory arrangements” to “Licensees of stations suffering or causing harmful interference **must cooperate in good faith** to resolve this problem by mutually satisfactory arrangements.” (Emphasis added.)

The changes proposed by FWCC are not perfect. While not guaranteeing that all operations in the shared 3.65-3.70 GHz band will be interference free, they are a needed improvement in the current rules in that they inject a greater element of certainty and reliability in the licensing scheme by imposing mandatory requirements on licensees without adversely affecting the speed and flexibility of the regulatory approach. This is perhaps a greater issue of customer protection than it is for the protection of licensees. In at least one instance of which we are aware, the service provided using the 3.65-3.70 GHz band is a lifeline service to low income people. Harmful interference to the communications of such customers due to irresponsible licensee behavior is antithetical

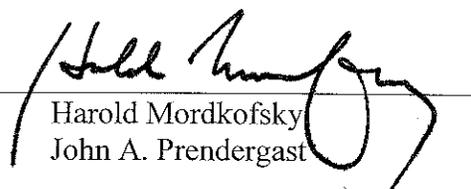
to one of the primary purposes for the Commission's being. In addition, adoption of the proposed rule changes will likely encourage users to make the investment needed to conduct operations in this band and will help to fulfill the Commission's vision of stimulating the rapid expansion of broadband services.

Accordingly, BloostonLaw urges the Commission to move forward promptly to adopt FWCC's proposed rule modifications.

Respectfully submitted,

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Attachment A

The following is a list of supporters of the rulemaking petition filed April 15, 2010 by the Fixed Wireless Communications Coalition, RM No. 11604, for the reasons set forth in the foregoing Comments:

**All West Communications, Inc.
Kamas, Utah**

**BEK Communications Cooperative
Steele, North Dakota**

**Cal-Ore Communications, Inc.
Dorris, California**

**Command Connect, LLC
Sulphur, Louisiana**

**Emery Telcom-Wireless, Inc.
Orangeville, Utah**

**HTC Technologies Co.
Waterloo, Illinois**

**Haviland Telephone Cooperative, Inc.
Haviland, Kansas**

**Hill Country Telecommunications, Inc.
Ingram, Texas**

**PVT Networks, Inc.
Artesia, New Mexico**

**Ponderosa Communications, Inc.
O'Neals, California**

**Sacred Wind Communications, Inc.
Albuquerque, New Mexico**

**Townes Broadband Corporation
Lewisville, Arkansas**