

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of)
)
Amendment of Communications Part 90 of the) RM-11604
Commission's Rules to Improve Interference Protection)
in the 3650-3700 MHz)

**COMMENTS OF
THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.**

The Wireless Communications Association International, Inc. (“WCAI”), by its attorneys, hereby responds to the solicitation by the Consumer and Governmental Affairs Bureau for comment on the above-captioned petition for rulemaking by the Fixed Wireless Communications Coalition (“FWCC”).¹

As the trade association of the wireless broadband industry, WCAI has many members who either utilize the 3650-3700 MHz band to provide commercial wireless broadband service to consumers or manufacture the equipment utilized to provide that service. WCAI was an active participant in the regulatory proceedings that led to the adoption of the current regulatory regime,² and has embraced the Commission’s resulting “licensed light” approach to the band as a means of facilitating rapid, low-cost deployment of wireless broadband services.

Although not a substitute for traditional licensing where service providers require robust protection against interference, WCAI believes the licensed light approach will prove to be a

¹ Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed, *Public Notice*, Report No. 2908, at 2 (June 4, 2010).

² See Petition of the Wireless Communications Ass’n Int’l, Inc. for Reconsideration, ET Docket No. 04-151 *et al.* (filed June 10, 2005); Consolidated Opposition of the Wireless Communications Ass’n Int’l, Inc and Comments to Petitions for Reconsideration, ET Docket No. 04-151 *et al.* (filed Aug. 11, 2005); Reply of the Wireless Communications Ass’n Int’l, Inc. to Oppositions, ET Docket No. 04-151 *et al.* (filed Aug. 24, 2005).

viable alternative for those service providers that are prepared to forego the interference protection associated with traditional licensing in exchange for spectrum that can be easily utilized at low cost. So long as 3650-3700 MHz band licensees continue to cooperate with one another to share the band in a manner that minimizes interference and maximizes utility, WCAI anticipates that 3650-3700 MHz will play a productive role in meeting America's broadband needs. Given the importance of licensee cooperation to the future success of the band, WCAI's 3.65 GHz Band Working Group has been actively involved in, among other activities, the development of operator best practices designed to mitigate the potential for interference and thereby maximize the utility of this shared band.³ Thus, WCAI has a vital interest in FWCC's proposal to modify the rules governing that band.

Quite frankly, FWCC's proposed modifications to Section 90.1319(d) of the Commission's Rules appear to be a solution in search of a problem. Although FWCC asserts that "[c]ertain key provisions in the rules are framed as recommendations, rather than as requirements,"⁴ WCAI is unaware of any 3650-3700 MHz band licensee interpreting the provisions at issue here as anything other than mandatory. Take, for example, FWCC's suggestion that the Commission modify the Section 90.1319(d) sentence "Licensees should examine this database before seeking station authorization, and make every effort to ensure that their fixed and base stations operate at a location, and with technical parameters, that will

³ Background information regarding WCAI's 3.65 GHz Band Working Group is available at http://www.wcai.com/taskf_3.65ghz.php. An example of the sort of best practice being developed by WCAI is a standard for setting WiMAX 802.16e operating parameters to facilitate synchronization of systems operating in the same or adjacent areas. As the Commission has recognized, synchronization can be an effective tool for mitigating interference among multiple users of the band. *See* World Data PR, Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 14648, 14653 (2009) [*"World Data MO&O"*] ("by selecting the same time division duplex ('TDD') WiMAX technology used by Neptuno, World Data facilitated the opportunity for both licensees to use synchronization to substantially mitigate interference between the two systems.").

⁴ Petition of Fixed Wireless Communications Coalition for Rulemaking, RM-11604, at 2 (filed April 15, 2010) [*"FWCC Petition"*].

minimize the potential to cause and receive interference.” FWCC contends that the use of the word “should” makes this provision optional rather than mandatory, and allows licensees to deploy facilities without consulting the database of registered facilities.⁵ Yet WCAI is aware of no instance in which a 3650-3700 MHz licensee has adopted such a strained interpretation of the rule and deployed without first consulting the registration database.

That is not surprising, particularly since the Wireless Telecommunications Bureau’s *Public Notice* setting forth the details of the 3650-3700 MHz band registration process alerted those interested in the band that:

there are four key steps involved in obtaining authority to operate a base or fixed station:

- Obtain a nationwide, non-exclusive license using ULS.
- *Before registering a station, examine ULS for nearby stations.*
- Obtain FCC-certified equipment
- Register each fixed and base station using ULS.⁶

One cannot read this language and conclude that the word “should” in Section 90.1319(d) is anything but synonymous with “must.” Indeed, in the *World Data MO&O* decision that FWCC cites as driving the need for rule changes, the Wireless Telecommunications Bureau specifically found that the newcomer had consulted the registration database and had taken measures to design its network to mitigate potential interference to the 3650-3700 MHz facilities that had already been deployed.⁷

⁵ See FWCC Petition at 6.

⁶ Wireless Telecommunications Bureau Announces Start Date for Licensing and Registration Process for the 3650-3700 MHz Band, *Public Notice*, 22 FCC Rcd 19802, 19802 (2007) (emphasis added).

⁷ See *World Data MO&O*, 24 FCC Rcd at 14653 (“the record before us reflects that World Data consulted ULS prior to filing the registrations and took steps towards sharing the band.”). See also *id.* at 14651; Response of World Data PR Inc. to Request by Neptuno Networks to Deny World Data PR Inc.’s Pending 3.65 GHz Base Station Notifications, File Nos. 0003959230 *et al.*, at 4-6 (filed Oct. 23, 2009); *id.* at Attach. A, Declaration of Fred Mercado, Attach. B, Declaration of Bahram Kohee.

Nonetheless, WCAI has no objection to the wordsmithing that FWCC proposes to clarify that the obligations imposed by Section 90.1319(d) are mandatory. However, the Commission must make clear that such changes do not fundamentally alter the substance of the rule, and that the rights and obligations of all licensees seeking to serve a given market are unaltered.

What concerns WCAI is that although FWCC's petition is not entirely clear, portions appear to suggest that adoption of FWCC's proposed changes to Section 90.1319(d) will provide the first entrant into a market with increased protection against interference from subsequent entrants. For example, FWCC complains that the current rule "allows a newcomer to cause harmful interference to an incumbent, and then demand that the incumbent make adjustments to alleviate the interference."⁸ FWCC is correct – this is a possibility under the current rules where, for example, the first entrant has designed its system to be so unreasonably vulnerable that a new entrant cannot reasonably operate without causing harmful interference. The same is true with respect to FWCC's complaint that "the newcomer can construct a system that receives harmful interference from an incumbent, and then look to the incumbent to take measures to rectify the problem."⁹ Again, FWCC is correct – if the first entrant has designed its system to cause such extensive interference that a newcomer cannot reasonably operate without suffering harmful interference, the first entrant may be required to take measures to protect a newcomer.

While FWCC sees these scenarios as problematic, WCAI believes they are exactly how the Commission's regulatory regime for the 3650-3700 MHz band should work. To the extent that the rules FWCC proposes are intended to alter these outcomes, they should be rejected. After all, the Commission's pronouncement that "[a]ll wireless licensees in the 3650 MHz band will have equal rights to the use of this spectrum (*i.e.*, no priority for first-in users)" means

⁸ FWCC Petition at 5.

⁹ *Id.*

nothing if first entrants can shift the burden of avoiding all interference to the newcomer.¹⁰ The Commission's rules and policies with respect to interference protection were clearly summarized by the Wireless Telecommunications Bureau in the *World Data MO&O*:

Licenses of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. That is, all licensees have the mutual obligation to cooperate and avoid harmful interference to one another and there is no first-in-time priority.¹¹

If sharing of the 3650-3700 MHz band is to succeed, the Commission should reiterate that pronouncement and confirm again that all licensees must bear equal responsibility for developing and maintaining an interference environment that maximizes opportunities for all, whether the first licensee to market or the last.

Respectfully submitted,

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¹⁰ Wireless Operations in the 3650-3700 MHz Band, Rules for Wireless Broadband Services in the 3650-3700 MHz Band, *Report and Order and Memorandum Opinion and Order*, 20 FCC Rcd 6502, 6513 (2005).

¹¹ *World Data MO&O*, 24 FCC Rcd at 14655 (citation omitted).

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that a copy of the foregoing Comments of the Wireless Communications Association International, Inc. was served this 6th day of July, 2010 by depositing true copies thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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/s/ Karla E. Huffstickler

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