

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Sections 15.35 and 15.253 of the Commission's Rules Regarding Operation of Radar Systems in the 76-77 GHz Band	)	ET Docket No. 11-90 RM-11555
	)	
Amendment of Section 15.253 of the Commission's Rules to Permit Fixed Use of Radar in the 76-77 GHz Band	)	ET Docket No. 10-28
	)	

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Xsight Systems Inc. ("Xsight") hereby submits this opposition to the Petition for Reconsideration ("Petition") filed by Honeywell International, Inc. ("Honeywell") on October 1, 2012.<sup>1</sup> Xsight specializes in technologies for airport safety applications, and its flagship product is FODetect®, an innovative system that operates in the 76-77 GHz band to monitor civil and military airport travel surfaces (runways and taxiways) and detect Foreign Object Debris utilizing both electro-optical and radar sensing technologies.<sup>2</sup> FODetect has undergone a successful evaluation installation with the Federal Aviation Administration ("FAA") and is currently undergoing deployment at multiple airports around the world, including in the United States. Xsight has actively participated in ET Dockets 10-28 and 11-90 for nearly two years.

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<sup>1</sup> This opposition is submitted in accordance with the requirements of 47 C.F.R. § 1.429(f).

<sup>2</sup> See *Ex Parte Letter of Xsight Systems* filed in ET Docket No. 10-28 (Jan. 13, 2011).

The Honeywell Petition asks the Commission to modify Section 15.253 of its rules to eliminate the current prohibition on the use of the 76-77 GHz frequency range on aircraft or satellites.<sup>3</sup> Honeywell makes this request in the apparent hope of transitioning its aircraft radar device from what it describes as a “development stage” to a fully finished product. Honeywell also suggests that there is some urgency associated with its petition for reconsideration based on a report and recommendation from the National Transportation Safety Board (“NTSB”) highlighting “the need for an anti-collision aid, such as a camera system, to help pilots determine the wingtip clearance and path during taxi.”<sup>4</sup>

As an active participant in the airport safety business, Xsight applauds Honeywell’s effort to develop new and innovative technologies that could enhance aviation safety. Furthermore, Xsight does not oppose Honeywell’s technology as a theoretical matter. Honeywell, however, seems to overstate the urgency of the issue because the NTSB Safety Recommendation deals only with visual aids and not with radar technologies. Moreover, the NTSB Safety Recommendation is merely a letter to the FAA, which the FAA no doubt would like to consider in great detail before the FCC takes a position on Honeywell’s novel technology. With due regard to the foregoing, Xsight hereby opposes the Honeywell Petition because (i) it relates to matters outside the scope of the order for which reconsideration was sought, and (ii) it was untimely filed. Indeed, given the novel legal, technical, and policy issues raised by Honeywell’s Petition, the appropriate path forward is for Honeywell to file a petition for rulemaking seeking an amendment to Section 15.253 of the Commission’s rules. This would

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<sup>3</sup> See 47 C.F.R. § 15.253(c) (“Operation under the provisions of this section is not permitted on aircraft or satellites.”).

<sup>4</sup> Letter from Deborah A.P. Hersman, Chairman, NTSB, to the Honorable Michael P. Huerta, Acting Administrator, Federal Aviation Administration, Re: A-12-48 and A-12-49 (Sept. 4, 2012) (available at <http://www.nts.gov/doclib/reclatters/2012/A-12-048-049.pdf>) (the “NTSB Safety Recommendation”).

allow the FAA and other interested parties an appropriate opportunity to study and provide comments on the Honeywell proposal.

In February of 2011, the Commission released a decision revising its Part 1 procedural rules to increase the efficiency and transparency of the agency.<sup>5</sup> In the *Modernized Procedures Order*, the Commission took the important step of delegating to Commission staff the power to “dismiss or deny defective . . . petitions for reconsideration of Commission decisions.”<sup>6</sup> The Commission also provided guidance to agency staff and the public by listing seven categories of circumstances “in which staff may dismiss or deny a reconsideration petition on the basis that it plainly does not warrant consideration by the full Commission.”<sup>7</sup> Among these seven categories are two of particular importance to the Honeywell Petition: (i) a petition that relates to matters outside the scope of the order for which reconsideration has been requested and (ii) a petition that was untimely filed.<sup>8</sup>

As noted above, the Honeywell Petition asks the Commission to remove the current prohibition on the use of the 76-77 GHz frequency range on aircraft or satellites.<sup>9</sup> This issue, however, was not raised by the Commission in the *76-77 GHz Notice of Proposed Rulemaking*, nor did Honeywell or any other commenter raise the issue in comments or reply

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<sup>5</sup> See *In the Matter of Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10-44, FCC 11-16 (2011) (the “*Modernized Procedures Order*”).

<sup>6</sup> *Id.* at ¶ 2.

<sup>7</sup> *Id.* at ¶ 28.

<sup>8</sup> See also 47 C.F.R. §1.429(l).

<sup>9</sup> See Petition at 2. See also 47 C.F.R. §15.253(c) (“Operation under the provisions of this section is not permitted on aircraft or satellites.”). Prior to the adoption of *In the Matter of Amendment of Sections 15.35 and 15.253 of the Commission Rules Regarding Operation of Radar Systems in the 76-77 GHz Band*, Report and Order, ET Docket Nos. 10-28 and 11-90, FCC 12-72 (rel. July 5, 2012) (the “*76-77 GHz Report & Order*”), the Commission’s prohibition on use of these frequencies on aircraft or satellites was contained in 47 C.F.R. §15.253(a).

comments in response to that notice of proposed rulemaking.<sup>10</sup> Use of the 76-77 GHz frequency range on aircraft or satellites raises a host of important legal, technical, and policy issues that should be addressed by the Commission in a full rulemaking proceeding. For example, the FAA – which expressed its support for airport safety operations that rely upon technologies using both radar and optical sensing technologies in response to the *76-77 GHz Notice of Proposed Rulemaking*<sup>11</sup> – should be consulted and given the opportunity to review a fully developed record concerning the novel proposal to allow use of the 76-77 GHz frequency range on aircraft. At present, there is simply no record for the Commission or any other stakeholder (e.g., the FAA) to review and comment upon. Accordingly, the Honeywell Petition is the perfect example of a petition that relates to matters outside the scope of the order for which reconsideration has been requested and should be dismissed promptly by the Commission.

The Honeywell Petition should also be dismissed because it was untimely filed. Section 1.429(d) of the Commission’s rules states that “a petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice of such action.”<sup>12</sup> The *76-77 GHz Report & Order* was published in the Federal Register on August 13, 2012. Accordingly, petitions for reconsideration of the *76-77 GHz Report & Order* were due at the Commission no later than September 12, 2012. The Honeywell Petition, however, was not filed at the Commission until October 1, 2012, more than two weeks after the deadline. Honeywell

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<sup>10</sup> See *In the Matter of Amendment of Sections 15.35 and 15.253 of the Commission Rules Regarding Operation of Radar Systems in the 76-77 GHz Band*, Notice of Proposed Rulemaking, ET Docket Nos. 10-28 and 11-90, FCC 11-79 (rel. May 25, 2011) (the “*76-77 GHz Notice of Proposed Rulemaking*”). See also comments and reply comments in response to the *76-77 GHz Notice of Proposed Rulemaking*. The comment cycle on the *76-77 GHz Notice of Proposed Rulemaking* closed on August 1, 2011.

<sup>11</sup> See *76-77 GHz Report & Order* at ¶23, fn. 50.

<sup>12</sup> 47 C.F.R. §1.429(d).

attempts to argue that an informal letter sent via email to Bruce Romano in the Office of Engineering and Technology more than two months prior to the date of the Petition somehow satisfied the deadline for filing a petition for reconsideration.<sup>13</sup> But the *Romano Letter* nowhere states that Honeywell is seeking reconsideration of a Commission decision. Instead, the *Romano Letter* sought informal confirmation concerning Honeywell’s interpretation of the scope of the Commission’s prohibition on the use of the 76-77 GHz frequency range on aircraft and satellites. Even if the Commission were to recognize an attenuated connection between the Petition and the *Romano Letter* (however strained), the Petition would merely be a “supplement” to the *Romano Letter*. However, the Commission’s rules – as noted above – clearly state that a petition for reconsideration “and any supplement thereto” must be filed by the 30 day deadline, which Honeywell did not do in this case. In short, however viewed, the Honeywell Petition was not timely filed and should be dismissed pursuant to Section 1.429(l) of the Commission’s rules.<sup>14</sup>

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<sup>13</sup> See Letter from Jay S. Newman, Fish & Richardson, to Bruce Romano, Office of Engineering and Technology, Federal Communications Commission (July 25, 2012), attached to the Honeywell Petition (the “*Romano Letter*”).

<sup>14</sup> The Commission also clarified in the *Modernized Procedures Order* that “petitions for reconsideration submitted by electronic means other than ECFS (such as electronic mail) and petitions submitted directly to staff shall not be considered to have been properly filed . . .” *Modernized Procedures Order* at ¶ 31. The *Romano Letter* was delivered via electronic mail directly to staff, which provides yet another reason for the Commission to dismiss the Honeywell Petition.

For the reasons set forth above, Xsight respectfully requests that the Commission promptly dismiss the Honeywell Petition.

Respectfully submitted,

/s/ Brian D. Weimer

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December 3, 2012

### Certificate of Service

I, Carol Wilkerson, hereby certify that on this 3<sup>rd</sup> day of December, 2012, a copy of the foregoing Xsight Opposition to Petition for Consideration is being sent via Federal Express, postage prepaid, to the following:

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