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June 23, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49

Notice of Oral Ex Parte Presentation

Dear Ms. Dortch:

On June 20, 2014, Richard Harnish, Executive Director of the Wireless Internet Service Providers Association ("WISPA"), and undersigned counsel to WISPA, had separate meetings with Louis Peraertz (Legal Advisor to Commissioner Clyburn); Erin McGrath (Legal Advisor to Commissioner Michael O'Rielly); David Goldman (Senior Legal Advisor to Commissioner Rosenworcel); and Renee Gregory and Gigi Sohn (respectively, Legal Advisor and Special Counsel for External Affairs to Commissioner Wheeler).

At each meeting, the WISPA representatives emphasized the main points of WISPA's June 2, 2014 petition for partial reconsideration ("Petition") of rules adopted in the above-referenced proceeding,¹ which eliminated the ability of devices operating in the 5725-5850 MHz band to be certified under Section 15.247 of the Commission's Rules. We explained that the Commission appropriately preserved the ability of wireless Internet service providers ("WISPs") to continue to deploy unlimited gain antennas in this band without a corresponding reduction in power, but that the new restrictions on out-of-band emissions would have severe consequences for rural and suburban Americans that rely on the unique rules of Section 15.247 to provide fixed broadband. In addition to residential and business broadband services, we pointed out that the 5725-5850 MHz band is used for public safety communications, voice services and utilities.

Mr. Harnish indicated that the 5725-5850 MHz band is the "workhorse" band for WISPs, the vast majority of which use the band for long-distance point-to-point and point-to-multipoint communications. In some cases, WISPs use the 5725-5850 MHz band for links of up to 65 miles, a distance that cannot be achieved in other unlicensed bands. Mr. Harnish added that in many areas, using Section 15.247 devices is the only way to deliver service because fiber,

¹ *Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band, first Report and Order*, ET Docket No. 13-49 (rel. Apr.1, 2014 ("Order")).



microwave and other alternatives are not available or affordable, given the demographics of the markets served. He stated that requiring the more restrictive out-of-band emission limits of Section 15.407 would have devastating consequences on WISPs and their customers, many of whom may lose service as existing equipment is replaced after the two-year grandfathering period.

Although the *Order* conceded that manufacturers may need to modify equipment to comply with the tighter emission limits, the WISPA representatives explained that the Commission did not appreciate that these modifications would be unacceptable because new Section 15.407 equipment with the same capabilities as today's Section 15.247 equipment will be completely unavailable or unaffordable. In reducing power and/or gain to keep the emissions within the more restrictive limits, WISPs and their customers would no longer be able to communicate with each other because the maximum link distance would be shorter than Section 15.247 equipment provides today. We pointed out that two other petitioners, Cambium Networks Ltd. and JAB Wireless, Inc., had collaborated on a technical exhibit that showed a loss of 65 percent of customers from a JAB Wireless base station. To compensate for this loss, JAB Wireless would need to deploy additional towers at a cost of about \$50,000 each, assuming towers and/or real estate were even available. If manufacturers instead incorporated filtering equipment in the radios to meet the more restrictive out-of-band emission limits, the cost of a Cambium radio would more than double and the useable spectrum capacity would be significantly reduced, leading to a loss of half of the sectors on a tower. We pointed out that doubling the cost of the equipment and reducing its performance by 50 percent would not be a viable solution.

We also emphasized that there is no technical justification for restricting out-of-band emissions. The Section 15.407 requirements will not eliminate any interference to Terminal Doppler Weather Radar ("TDWR") facilities from legally operating devices. We pointed out that the *Order* already adopts enhanced software security requirements, improvements to device certification testing and upgrades to dynamic frequency selection, which are completely sufficient to eliminate interference to TDWR facilities. By adopting enhanced software security, yet allowing devices to operate under Section 15.247, the Commission can avoid an immeasurable economic impact on WISPs and all other industries that have come to depend on these devices for their daily communications needs.

The WISPA representatives stated that devices certified under Section 15.247 and devices certified under Section 15.407 had co-existed without harmful interference for many years. We added that devices certified under Section 15.247 were most often used for point-to-point operations for long-distance communications in rural areas, and that devices certified under Section 15.407 were most often used for low-power, indoor operations in urban areas, thereby substantially reducing the potential for harmful interference in the future. In addition, as WISPA noted in its Petition, the rule change would effectively obsolete more than 9,000 devices the Commission certified under Section 15.247. Accordingly, any benefits of harmonizing the rules across the entire 5 GHz band are far outweighed by the benefits inherent in preserving both sets of rules.

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Rural, suburban and metropolitan Americans need the 5725-5850 MHz band to remain unencumbered by the more restrictive Section 15.407 out-of-band emission limits in order to continue to receive broadband services from dependable and affordable service providers.

We concluded by urging the Commission to reinstate Section 15.247, and asked the Commission to release a Public Notice as soon as possible so that a complete record could be developed and a decision released in an expeditious manner.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed electronically via the Electronic Comment Filing System in the above-captioned proceeding.

Respectfully submitted,



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Providers Association*

cc: Louis Peraertz
Erin McGrath
David Goldman
Renee Gregory
Gigi Sohn