

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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In the Matter of the Amendment of the  
Commission's Rules Regarding the  
37.0-38.6 GHz and 38.6-40.0 GHz Bands

Implementation of Section 309(j) of the  
Communications Act – Competitive Bidding  
37.0-38.6 GHz and 38.6-40.0 GHz Bands

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ET Docket No. 95-183  
RM-8553

PP Docket No. 93-253

**COMMENTS OF THE FIXED WIRELESS COMMUNICATIONS COALITION**

December 3, 2004

Mitchell Lazarus  
FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209  
703-812-0440  
Counsel for the Fixed Wireless  
Communications Coalition

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**COMMENTS OF  
THE FIXED WIRELESS COMMUNICATIONS COALITION**

**I. INTRODUCTION**

The Fixed Wireless Communications Coalition (FWCC) files these comments in response to the Third Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

**II. COMMENTS**

**A. Coordination Requirements**

The FWCC agrees with the Commission's proposal to modify the coordination requirements for the 39 GHz band to be in conformance with the new requirements for the 37 GHz band, and supports elimination of the coordination distance trigger of 16 kilometers and

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<sup>1</sup> *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, 19 FCC Rcd 8232 (2004) (Notice). The FWCC is a coalition of companies, associations, and individuals interested in the Fixed Service -- *i.e.*, in terrestrial fixed microwave communications. Our membership includes manufacturers of microwave equipment, licensees of terrestrial fixed microwave systems and their associations, and communications service providers and their associations. The membership also includes railroads, public utilities, petroleum and pipeline entities, public safety agencies, and/or their respective associations, landline and wireless, local, and interexchange carriers, and telecommunications attorneys and engineers. Our members build, install, and use both licensed and unlicensed point-to-point, point-to-multipoint, and other fixed wireless systems, in frequency bands from 900 MHz to 95 GHz. For more information, see [www.fwcc.us](http://www.fwcc.us).

implementation of a PFD coordination trigger.<sup>2</sup> The FWCC also supports the specific requirement for coordination where there is optical line of sight into another licensee's geographic area and where the PFD generated at the boundary of the other licensee's geographic area is above  $-125\text{dBW/m}^2$  in any 1 MHz band.<sup>3</sup>

## **B. Satellite Earth Stations**

The FWCC is concerned with the prospect of satellite earth stations operating in the 37.5-40.0 GHz band. However, we agree that if earth stations are permitted to operate in that band the proposed PFD coordination trigger should replace the distance coordination trigger.<sup>4</sup> It is important that terrestrial coordination parameters be the same everywhere and that earth station licensees not be conveyed greater rights than terrestrial stations and not be able to claim interference from fixed terrestrial stations at distances greater than the fixed terrestrial stations can. It is essential that an FSS operator be required to secure a coordination agreement with all potentially affected Part 101 licensees prior to filing an application for a Part 25 license in that band. We strongly urge that this band be designated for use by gateway earth stations only and that they be located so that satellite beams avoid built-up areas.

## **C. PFD Levels**

The FWCC continues to be concerned with the downlink PFD levels that might be received from a space station in the 37.5-40.0 GHz band. We are especially concerned with levels that might be encountered if the space station is permitted to increase its power to overcome the effects of rain attenuation, particularly as to Fixed Service receivers within the satellite footprint but outside the worst of the rainfall area. The FWCC continues to believe that greater protection for Fixed Service receivers is required. The FWCC recommends that any rules developed that would allow for an increase in space station power include sufficient protection for Fixed Service receivers to prevent unacceptable interference anywhere within the spot beam of the satellite.

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<sup>2</sup> Notice at para. 69, 70.

<sup>3</sup> Notice at para. 70.

<sup>4</sup> Notice at para. 77.

#### **D. Coordination with Federal Government Installations**

The Commission seeks comment on the appropriate coordination method to employ between adjacent licensees and with the Federal government, and proposes to apply these changes to the 39 GHz band as well as the 37/42 GHz bands.<sup>5</sup>

The FWCC does not believe that the coordination requirements or the coordination methods employed between geographic area licensees and Federal government operations should be any different from the requirements and methods used among non-Federal government operations. Geographic area licensees acquired their rights through a competitive bidding process and should be protected to the same degree from other all other operators. This also means there should be no more constraint on the non-Federal government licensee to protect Federal government operations than to protect non-Federal government operations. Of course we recognize that in a very limited number of specific circumstances national security interests might take priority over this expectation of protection.

#### **E. Licensing**

The FWCC supports licensing on a geographic area basis using Economic Areas, consistent with the licensing scheme adopted for the 39 GHz band. The FWCC does not believe that using a first-come first-served link registration approach in this band fosters efficient spectrum use or effective competition or innovation.<sup>6</sup> New technologies tend to require portable-fixed and wide area capabilities that would be immediately extinguished by a non-area-wide approach. First-come first-served link registration might work well where only single sites are required in a geographic area, but for the type of services likely to be offered in this band, multiple sites are typically required. The model used in the 70/80/90 GHz bands, of multiple non-exclusive nationwide licenses,<sup>7</sup> does not represent the new technology expected to be deployed in the 37 GHz band. Multiple licensees in close proximity in the 37 GHz band would exacerbate coordination and

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<sup>5</sup> Notice at para. 91.

<sup>6</sup> Notice at para. 41.

<sup>7</sup> *See generally Allocations and Service Rules for the 71-76 GHz, 81-86 GHz, and 92-95 GHz Bands*, 8 FCC Rcd. 23318 (2003).

interference concerns. Such an approach also creates economic distortions, in that it dramatically increases competitive pressure for existing 39 GHz license holders, in an economic environment that is already difficult. Existing license holders acquired their licenses through commercial and competitive bidding processes. Similar services, vying for the same customers, would possess the distorting economic advantage of not having had to pay for their licenses. The FWCC recommends that the exclusive use, geographic area licensing approach used in the 39 GHz band should also be adopted for the 37 GHz band.

#### **F. Licensing Renewal**

The Commission proposes to adopt a “substantial service” build-out requirement for license renewal if the band is licensed using EA licenses, but invites comment on alternative build-out requirements if a different licensing scheme is adopted.<sup>8</sup> The FWCC supports licensing on an EA basis, but does not agree with the requirement that licensees demonstrate substantial service on a per-license, per-channel basis. The Commission should take into account *all* common costs that licensees incur in building national or regional networks when considering whether a licensee has met its substantial service requirement. As the Commission is aware, these costs cannot always be rationally allocated to one particular license or another. Rather, they are costs incurred to build out all the licenses held by a licensee. This approach is consistent with the flexibility intended by the 39 GHz Order and stated as intended in this order. Such consideration will provide certainty to these licensees that their common investments will be considered by the Commission. Rules that closely track Section 101.1011 “Construction requirements and criteria for renewal expectancy” for the LMDS service would remove the directly contradictory regulations governing fixed wireless license management and build-out requirements that currently exist in Section 101.17.

#### **G. Aggregation/Disaggregation**

The FWCC supports the Commission’s proposal to permit licensees to partition and/or disaggregate either through the competitive bidding process or through private negotiation and agreement. The decision should be at the discretion of the bidding consortia or license holder and should of course be subject to all coordination rules.

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<sup>8</sup> Notice at para. 39.

### **III. CONCLUSION**

The FWCC applauds the Commission 's initiative in this proceeding, and urges it to adopt rules consistent with the foregoing.

Respectfully submitted,

Mitchell Lazarus  
FLETCHER, HEALD & HILDRETH, P.L.C.  
1300 North 17th Street, 11th Floor  
Arlington, VA 22209  
703-812-0440  
Counsel for the Fixed Wireless  
Communications Coalition

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## SERVICE LIST

Chairman Michael Powell  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Michael J. Copps  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

John Muleta, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Scott D. Delacourt  
Associate Bureau Chief/Chief of Staff  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Tom Stanley, Chief Engineer  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Uzoma C. Onyeije, Legal Advisor  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Joel Taubenblatt  
Chief, Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

John J. Schauble  
Supervising Attorney Advisory  
Deputy Division Chief for  
Legal Rule Makings  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Charles Oliver, Attorney Advisor  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Michael Pollak, Electronics Engineer  
Broadband Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554