

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Revision of Part 15 of the Commission’s) ET Docket No. 13-49
Rules to Permit Unlicensed National)
Information Infrastructure (U-NII))
Devices in the 5 GHz Band)

OPPOSITION

The Telecommunications Industry Association (“TIA”)¹ hereby files this Opposition to the Petition for Partial Reconsideration filed by the Association of Global Automakers, Inc. (“Automakers Petition”).² The Automakers Petition is both substantively and procedurally flawed. Substantively, the automakers’ claims are entirely without merit. Procedurally, the Automakers have provided no additional information or arguments, nor have they demonstrated any material error warranting reconsideration.

Moreover, TIA also wishes to convey its support for the Petition for Reconsideration filed by Echostar Technologies L.L.C. (“Echostar Petition”) seeking a clarification regarding set-top boxes.³

¹ TIA is the leading trade association for the information and communications technology (“ICT”) industry, representing companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of policy issues affecting the ICT industry and forges consensus on industry standards.

² Petition for Partial Reconsideration, filed May 1, 2014 by Association of Global Automakers, Inc. in ET Docket No. 13-49.

³ Petition for Reconsideration of Echostar Technologies L.L.C, filed June 2, 2014 in ET Docket No. 13-49.

I. The Automakers Incorrectly Try to Conflate Issues From Different Portions of the 5 GHz Band.

TIA is optimistic that unlicensed operations (including Wi-Fi) are able to operate *within* the 5850-5925 MHz U-NII-4 band alongside DSRC, and that issues of harmful interference can be successfully addressed if all stakeholders actively collaborate to do so.⁴ Additionally, in our initial comments in this proceeding, TIA explicitly stated that we were “particularly concerned that whatever rules the Commission adopts to govern *U-NII-4* operations, those rules provide appropriate levels of protection to [DSRC] systems in the [ITS] radio service.”⁵ TIA also recognizes the reality of our nation’s scarce spectrum resources and the necessity for parties to work together to find spectrum sharing solutions.

For this precise reason, TIA urged the Commission to move forward with service rules for *other* portions of the 5 GHz band while waiting for technical analyses from NTIA and others regarding unlicensed operations within the U-NII-4 band itself.⁶ In light of continued work “in conjunction with NTIA and industry” on U-NII-4, the Commission followed this bifurcated approach by “not addressing” service rules for the U-NII-4 band in its First Report and Order.⁷

⁴ See TIA Comments, filed May 28, 2013 in ET Docket No. 13-49 (“TIA Comments”), at 16 (“Although protecting DSRC will be challenging, TIA is optimistic that approaches to successful sharing between DSRC and U-NII devices can be developed.”)

⁵ *Id.* at 15-16 (emphasis added).

⁶ See, e.g., *id.* at 13 (“[T]he Commission should be open to issuing a separate report and order dealing with the [5350-5470 and 5850-5925 MHz bands], with the resolution of the 5850-5925 MHz band taking precedence because the issues appear more readily resolvable”); *id.* at 14 (“TIA and its member companies hope to have an opportunity to work with NTIA to expedite the process so that the Commission will be in a position to allow U-NII use of these bands as rapidly as possible.”).

⁷ First Report and Order, *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 (rel. Apr. 1, 2014) (“First Report and Order”) at ¶ 10. Unfortunately, NTIA has not yet advanced this U-NII-4 work. For this reason, bi-partisan and bi-cameral legislation (the “Wi-Fi Innovation Act”) has recently been introduced in Congress to require testing that will lead to opening the U-

The Commission did, however, wisely choose to move forward in other portions of the 5 GHz band, including in spectrum located immediately adjacent to the U-NII-4 band.

II. The Automakers’ Unjustifiably Attempt to Claim that their Reasonable Expectations Have Been Thwarted.

The Automakers state that the FCC must protect the “reasonable interests and expectations of its operators”⁸ – with which TIA, of course, concurs. However, what the automakers assert to be their “reasonable” expectations is entirely *unreasonable*, bordering on unbelievable.

The Automakers begin by suggesting that while ITS and DSRC operations will not themselves be licensed, “that does not mean that they lack administrative rights and expectations with respect to this radio spectrum.”⁹ They argue that the Commission’s actions to consolidate its rules in an *adjacent* band now “undermine”¹⁰ their expectations, and ask the Commission to “give adequate consideration”¹¹ to their arguments in a manner sufficient to satisfy the well-known requirement of *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983) that “an agency changing its course must supply a reasoned analysis.”

This argument is utterly farcical. *First*, the Commission has not undermined any legitimate expectation of the Automakers. When the Commission first allocated the 5850-5925 MHz band to DSRC in 1999, it explicitly recognized that ISM and unlicensed Part 15 operations

NII-4 band to unlicensed devices. *See* S. 2505, 113th Congress (introduced June 19, 2014 by Sens. Rubio and Booker) and H.R. 5125, 113th Congress (introduced July 16, 2014 by Reps. Latta, Issa, Eshoo, and Matsui). TIA strongly supports this legislation.

⁸ Automakers Petition at 8.

⁹ *Id.* at 9.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 9.

were permitted in the band up to 5875 MHz.¹² More recently, just prior to the First Report and Order in this proceeding, the Commission’s rules clearly permitted the operation of unlicensed devices in the 5725-5850 MHz band – including operations directly adjacent to DSRC at 5850 MHz.¹³ Specifically, Sec. 15.247 – which permitted operations up to 5850 MHz – was originally adopted in 1985, and modified in 2002.¹⁴ For their part, the Automakers claim that “the absence of harmful interference from other wireless systems has been an important assumption in [their] research” – yet they can cite only to a provision in the IEEE 802.11 standard which simply states that operations within the 5850-5925 MHz band are currently required to be registered with the FCC – a provision that says nothing about operations *adjacent* to the DSRC band.¹⁵

Second, as a substantive matter, the First Report and Order itself does not represent a reversal of course regarding the need to protect DSRC operations, as the Automakers try to assert. As the Commission clearly explained, operations just below 5850 MHz were governed by two separate rule parts – Secs. 15.247 and 15.407. Therefore, for several reasons including decreasing “unnecessary complexity in the equipment authorization process,” the First Report and Order consolidated these rules, while also adopting software security changes for devices.¹⁶ But in diametric opposition to the Automakers’ claim, these changes were made for the express

¹² Report and Order, *Amendment of Parts 2 and 90 of the Commission’s Rules to Allocate the 5.850-5.925 GHz Band to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services*, FCC 99-305, at ¶ 6 (rel. Oct. 22, 1999) (emphasis added).

¹³ First Report and Order ¶ 87; *see also* Automakers Reply Comments at 29-30 (“The Commission currently permits unlicensed devices to operate on bands up to 5.850 GHz under section 15.247 of its rules.”).

¹⁴ First Report and Order ¶ 87.

¹⁵ *See* IEEE Std. 802.11-2012 (Annex E.2.3); Automakers Petition at 9 (citing IEEE standard).

¹⁶ First Report and Order ¶ 92.

purpose of helping to “*eliminate* potential harmful interference from unlicensed devices to other spectrum users.”¹⁷

In that regard, the Commission observed that “the unwanted emission limits in Section 15.407 are somewhat more restrictive than those in Section 15.247.”¹⁸ Rejecting some suggestions to adopt the looser limits of Section 15.247, the Commission ultimately adopted the *more stringent* limits of Section 15.407 for the combined rule, noting that doing so would provide “clarity and simplicity, while providing appropriate protection to incumbent services.”¹⁹ Therefore, it simply defies explanation for the Automakers to complain when the upshot of the Commission’s rule changes was to *strengthen* their protections by adopting stricter limits vs. what was previously allowed.

Third, the automakers attempt to suggest that the Commission acted improperly by announcing that it “disagrees” with the automakers, rather than “assessing and study[ing]” the purported problem.²⁰ However, the Commission’s rationale was entirely reasonable. Simply put, as a consequence of adopting even more stringent unwanted-emission limits, the Commission appropriately – and logically – dismissed concerns from automakers about spillover interference into the DSRC band:

Unlicensed devices are already allowed to operate [up to 5850 MHz] under Section 15.247 ... with *higher* unwanted emission levels than we are adopting for the new combined rule part. We are simply consolidating the existing rules into a single section, which will *decrease, not increase* the risk of harmful interference to DSRC services.²¹

¹⁷ *Id.* at ¶ 92 (emphasis added).

¹⁸ *Id.* at ¶ 114. When considering issues regarding potential interference to operations in adjacent bands, it is the unwanted emissions limits that are at issue.

¹⁹ *Id.* at ¶ 119, *see also id.* at ¶ 115 (“Exalt is opposed to our proposal [to apply the more restrictive limits]”).

²⁰ Automakers Petition at 6.

²¹ First Report and Order ¶ 120 (emphasis added).

Indeed, the Commission’s explanation is brief only because logic required nothing more.

In sum, the First Report and Order included a tightening of unwanted emission limits and the adoption of new software security changes that should work in the automakers’ *favor*.

Contrary to what the automakers try to argue, this hardly qualifies as a “reversal” of the Commission’s general support for DSRC operations within the 5850-5925 MHz band.

III. The Automakers Petition is Procedurally Flawed.

Under Section 1.429(1) of the Commission's rules, the staff may dismiss or deny a reconsideration petition on the basis that it “plainly does not warrant consideration by the full Commission.”²² Among the examples of such petitions are those which “[f]ail to identify any material error, omission, or reason warranting consideration,” or those which “[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding.”²³ The automakers’ petition fails on both counts.

Indeed, the Automakers provide no new information or arguments for the Commission to consider. To the contrary, the Automakers – by their own admission – merely “repeat [their] request” that the Commission should not allow U-NII devices to operate in the band adjacent to ITS operations.²⁴ The same argument was made in both the Automakers’ initial comments and

²² 47 CFR § 1.429(1).

²³ 47 CFR §§ 1.429(1)(1), (3).

²⁴ Automakers Petition at 3.

reply comments,²⁵ and the Commission clearly considered this point, as is evident by its language quoted above (*supra* p. 5) – which is included twice in the First Report and Order.²⁶

IV. Clarification: TIA Supports EchoStar’s Petition for Reconsideration.

In a separate Petition for Reconsideration, EchoStar has requested the Commission to clarify that set-top boxes that serve as client devices for indoor wireless access points may operate in the U-NII-1 band (5.15-5.25 GHz) at the maximum power level afforded under the new rule (i.e., 1 Watt).

TIA supports the EchoStar Petition. TIA notes that because these devices are classified as mobile for RF exposure purposes, there is a concern that a Telecommunications Certification Body (“TCB”) reviewer may then classify the overall operation as a mobile client device, thus requiring the use of the lower power for mobile client devices in the U-NII-1 band. Therefore, in order to avoid problems during an FCC certification review process, TIA suggests providing a clarification to define these type of devices as fixed. TIA recommends the following addition to newly-adopted 47 C.F.R. § 15.407(a)(1)(ii):

For an indoor access point or devices generally used in a fixed-type setting such as a set top box operating in the band 5.15-5.25 GHz, the maximum conducted output power over the frequency band of operation shall not exceed 1 W provided the maximum antenna gain does not exceed 6 dBi. In addition, the maximum power spectral density shall not exceed 17 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the maximum conducted output power and the maximum power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

²⁵ See Comments of the Alliance of Automobile Manufacturers, Inc. and the Association of Global Automakers, Inc., filed May 28, 2013 in ET Docket No. 13-49, at 31; Reply Comments of the Alliance of Automobile Manufacturers, Inc. and the Association of Global Automakers, Inc., filed July 24, 2013 in ET Docket No. 13-49, at 29-31.

²⁶ First Report and Order ¶ 120; *id.* at ¶ 94.

V. Conclusion

For the plethora of substantive and procedural reasons stated above, TIA respectfully requests that the Commission dismiss or deny the Petition for Partial Reconsideration filed by the Association of Global Automakers, Inc.

TIA further respectfully requests that the Commission grant the Petition for Reconsideration filed by Echostar.

Respectfully submitted,

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Certificate of Service

Pursuant to Sections 1.47(d), (g) and 1.429(f) of the Commission's rules, I certify that this Opposition was served by email on August 14, 2014 upon:

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TIA and above-named counsel for the Association of Global Automakers, Inc. have agreed to service of this Opposition, and any Reply, by email.

/s/ Dileep Srihari
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