PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D. C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 04-1844
June 24, 2004

COMMISSION STAFF CLARIFIES FCC'S ROLE REGARDING RADIO INTERFERENCE MATTERS AND ITS RULES GOVERNING CUSTOMER ANTENNAS AND OTHER UNLICENSED EQUIPMENT

The FCC's Office of Engineering and Technology (OET) releases this Public Notice in response to questions from the public regarding the use of unlicensed devices, including customer antennas, especially in the context of a variety of multi-tenant environments (MTEs). MT environments encompass venues such as hotels, conference and convention centers, airports, and colleges and universities. In particular, questions have arisen about the role of the Commission in addressing and resolving radio interference ("RFI") issues in these settings. In addition, questions have arisen about the ability of homeowners associations, landlords, and other third parties to prohibit customer use of small antennas when consumers install and operate them as unlicensed devices.

In response, we reaffirm that, under the Communications Act, the FCC has exclusive authority to resolve matters involving radio frequency interference [RFI] when unlicensed devices are being used, regardless of venue. We also affirm that the rights that consumers have under our rules to install and operate customer antennas one meter or less in size apply to the operation of unlicensed equipment, such as Wi-Fi access points - just as they do to the use of equipment in connection with fixed wireless services licensed by the FCC.

Under the Communications Act of 1934, as amended, the FCC holds exclusive jurisdiction over the regulation and resolution of RFI issues.[1] Section 301 declares that one of the purposes of the Act is to "maintain the control of the United States over all channels of radio transmission," and Section 303(f) obligates the Commission to make regulations necessary to "prevent interference."[2] In addition, Section 302 has granted the Commission express authority to adopt regulations "governing the interference potential of devices which in their operation are capable of emitting radio frequency energy by radiation … in sufficient degree to cause harmful interference to radio communications."[3] As the Conference Report to the 1982 Amendments to the Act stated, the Act reserves "exclusive jurisdiction to the Federal Communications Commission over matters involving RFI [and provides] that regulation of RFI phenomena shall be imposed only by the Commission."[4] Both the FCC and the federal courts have overturned

[1] Communications Act of 1934, 47 U.S.C. § 1 et. seq. (all citations to the U.S. Code) (Act).
[2] 47 U.S.C. §§ 301, 303(f) (2004).
[3] 47 U.S.C. § 302a(a)(1) (2004).
[4] *See* H.R. Report No. 765, 97th Cong., 2d Sess. 33 (1982), 1982 U.S.C.C.A.N. 2261, 2277 (1982 Conference Report).

attempts by third parties to regulate RFI matters in light of the FCC's exclusive authority in this area.[5]

The statute has always contemplated FCC authority over not only RFI issues raised by the operation of FCC licensees, such as radio broadcast stations, but also RFI issues arising from the operation of unlicensed devices. As the Senate Report to the 1968 Amendments to the Act stated, "[t]he Federal Communications Commission presently has authority under Section 301 of the Communications Act to prohibit the use of equipment or apparatus which causes interference to radio communications and, under 303(f) to prescribe regulations to prevent interference between stations. Pursuant to this authority the Commission has established technical standards applicable to the use of various radiation devices."[6] As one example of RFI involving unlicensed devices, the Report cited interference caused to air-safety-related emergency communications and other frequencies at a California facility by 58 garage door openers, which were then, as well as now, RF devices subject to technical standards set out in Part 15 of our rules.[7] The 1968 changes to the Act expanded the FCC's authority to address these questions by enacting Section 302, which authorized the agency to apply its technical standards to the manufacturers of possible interference-causing devices.[8] Today, in addition to the unlicensed devices discussed in the legislative history, such as radios, tape recorders, remote control devices, and garage door openers, a great diversity of RF technologies operate on an unlicensed basis under Part 15. This growth has led to the increasing number of inquiries from the public about the FCC's authority to regulate RFI, and our decision to reaffirm that this authority exists regardless of whether devices or operations are of a licensed or unlicensed nature.

We also affirm that the consumer protections for the installation and use of consumer antennas under the FCC's Over-the-Air Reception Devices (OTARD) rules apply to unlicensed devices.[9] By their terms, these rules apply, among other things, to customer antennas - one-meter or less in size - used for transmitting and/or receiving any *fixed wireless signal* of any commercial nonbroadcast communications signal that is transmitted via wireless technology to or from a customer location. The rules prohibit homeowner associations, landlords, state and local governments, or any other third parties from placing restrictions that impair a customer antenna user's ability to install, maintain, or use such customer antennas transmitting and/or receiving commercial nonbroadcast communications signals when the antenna is located "on property within the exclusive use or control" of the user where the user has a "direct or indirect

---

[5] *See generally Freeman v. Burlington Broadcasters Inc*., 204 F.3d 311, 319-22 (2nd Cir. 2000); *Southwestern Bell Wireless Inc. v. Johnson County Board of County Commissioners*, 199 F.3d 1185, 1189-93 (10th Cir 1999); *see also In the Matter of 960 Radio, Inc., Memorandum Opinion and Declaratory Ruling*, FCC 85-578, 1985 WL 193883 (Nov. 4, 1985) ("960 Radio"); *In re Petition of Cingular Wireless L.L.C.. for a Declaratory Ruling,* Memorandum Opinion and Order, 18 F.C.C.R. 13126, DA 03-2196 (rel. July 7, 2003) ("Anne Arundel"); *In re Mobilecomm of New York Inc.*, Memorandum Opinion and Declaratory Ruling, 2 FCC Rcd 5519 (CCB 1987) ("Mobilecomm").

[6] *See* S. Rep. No. 1276, 90th Cong., 2d Sess. 1968, 1968 U.S.C.C.A.N. 2486, 2487 (1968 Senate Report); *see generally* 47 C.F.R §§ 2.901, 2.1033, 15.5 et seq (defining the FCC's equipment certification and RFI requirements)

[7] *See* 1968 Senate Report at 2488.

[8] *See* 1968 Senate Report at 2488-91.

[9] *See* 47 C.F.R. § 1.4000 (2004) ("OTARD Rule"); *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order in WT Docket No. 99-217, the Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and the Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, 15 FCC Rcd. 22,983 (2000) (extending OTARD protections to fixed wireless telecommunications signals).

ownership or leasehold interest in the property, except under certain exceptions for safety and historic preservation.[10]

In a recent *Memorandum Opinion and Order* (*MO&O*), the FCC held that OTARD protections apply to certain kinds of wireless technologies where customer-end antennas also function to relay service to other customers.[11] The point-to-point-to-point and "mesh" architectures addressed in the *MO&O* are being actively developed and deployed to provide innovative services on both a licensed and unlicensed basis. The FCC observed in the *MO&O*, that for the purposes of OTARD protections, the equipment deployed in these networks shares the same physical characteristics of other customer-end equipment, and found that the only difference was the additional functionality of routing service to additional users. The FCC stated that the OTARD rules should not serve to disadvantage more efficient technologies, and held these protections also extend to such technologies when they otherwise meet the requirements of the rules.[12]

Under FCC rules, fixed wireless customer antennas protected by OTARD are those used to receive and/or transmit "fixed wireless signals" – *i.e.*, commercial nonbroadcast communications signals "to and/or from a fixed customer location."[13] The rules do not limit their applicability only to signals used in conjunction with a licensed service, or exclude signals sent to or from an unlicensed device operating under Part 15 of our rules. In fact, the current applications of "mesh" and point-to-point-to-point technologies discussed in the *MO&O* are predominantly unlicensed devices providing service under the FCC's Part 15. In 2000, the FCC extended OTARD protections to include fixed wireless technologies, refusing to distinguish protections based on the services provided through the same customer antenna. The FCC noted that precisely the same customer antennas may be used for video services, telecommunications, and internet access, and sometimes that a single company might offer different packages of services using the same type of customer antennas. For these reasons, the FCC's OTARD protections apply regardless of whether the fixed wireless signals are delivered on a licensed or unlicensed basis.

This action is taken under delegated authority pursuant to Section 5(c) of the Communications Act of 1934, and Sections 0.5(c), 0.31, 0.204, 0.241 of the Commission's Rules, 47 C.F.R. §§ 0.5(c), 0.31, 0.2.04, 0.241.

Office of Engineering and Technology contact: James Miller, (202) 418-7351, e-mail James.Miller@FCC.gov.

-OET-

[10] 47 C.F.R. § 1.4000(a)(1) (2004).
[11] *See Promotion of Competitive Networks in Local Telecommunications Markets*, Order on Reconsideration, 19 FCC Rcd 5637, FCC 04-41 (rel. Mar. 24, 2004).
[12] The Commission did note that its ruling that OTARD protections apply to customer end-equipment that also relays service to other customers did not mean that "carriers may simply locate their hub-sites on the premises of a customer in order to avoid compliance with a legitimate zoning regulation." Rather, the protections apply when the equipment is installed in order to serve the customer on such premises. *Id.* at ¶17.
[13] 47 C.F.R. §1.4000(a)(2) (2004).