

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

FCC Takes Initiative To Clarify Its Role In Addressing Radio Interference Issues

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As you enjoy this soon-to-be lovely Western New York summer, you will surely notice the large number of people carrying and using hand-held phones. Whether it's a teenager chatting with friends, or a stressed parent in the grocery store check-out line, wireless phones are in use everywhere.

When you add Blackberries and other hand-held data devices to the mix, and then consider wireless data networks that have been installed in a vast number of homes and offices, and add that to the number of satellite dishes and the ever-important garage door openers that are a staple of 21st century (not to mention 20th century) homelife, (and which also operate on radio frequencies), it's not difficult to surmise that there will be — and, in fact, are — problems with interference.

As recently as late June, Federal Communications Commission staff members took the initiative to clarify the FCC's role in addressing radio interference issues, for those services which utilize both licensed and unlicensed (including, for example, Wi-Fi) services. It is worth noting this action, published under DA04-1844, was taken by staff and not the commission itself. This distinction may provide an out for the FCC if the outcry following this clarification of who's really in charge on this issue is sufficiently great to warrant such action.

In the pre-Wi-Fi days, traditional radio applications in large environments were licensed. These include private radio, public radio, microwave, broadcast and other large-scale systems, among others. All of these services continue to be licensed.

However, as wireless technologies have improved, many of us, myself included, have brought the technology, which is, by definition, unlicensed, into our homes. I have a big yard, but periodically I'll pick up a signal from one of my neighbors when my wireless system is turned off. Since neither of us is prone to "step on" each other's signals, this isn't a problem.

However, the same problem has been significantly more serious at airports and universities where varied unlicensed networks not only "step on" each other, but actively interfere with the ability of other networks to perform as required.

Airports have been particularly susceptible to interference because of the variety of networks in use. Currently, many airlines are using wireless devices to scan bags not only at check-in, but throughout the traveling process.

However, in addition to the airlines' proprietary networks that are used to accomplish a number of tasks, the airports themselves are deploying their own wireless networks, not only to operate their own business, but to support travelers who want — and need — to take advantage of untethered communications capabilities as they wait for flights.

When the networks have interfered with one another, turf wars have sprung up between the airports and their largest and most important tenants — the airlines. Most recently, in a June 8 story in *The Wall Street Journal*, author Amy Schatz said that under these circumstances, "airport officials say they have little choice but to take control of the airwaves."

"Not so fast," said the FCC staff. On June 24, the staff reiterated the

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commission's "exclusive authority to resolve matters involving radio frequency interference (RFI) when unlicensed devices are being used, regardless of venue." This language re-asserts the FCC's authority, not only with respect to large locations like university campuses or airports, but also with respect to much more localized sites including apartment buildings and townhouse and patio home communities.

Despite the occasional objections of homeowners' associations, individual tenants, whether they be owners or renters, have the right, under the Over-the-Air Reception Devices (OTARD) rules, to have individual customer antennas, one meter or less in size, that can be used for sending and/or receiving any fixed wireless signal of any commercial non-broadcast communications signal transmitted via wireless technology to or from a commercial location.

Under these rules, neither homeowners associations, nor landlords or state or local governmental authorities can place restrictions on any individual resident who sends or receives this type of data. So long as the antenna is located in a spot where it is within the "exclusive use or control" of the user, and so long as there are no issues of either safety or historic preservation, the OTARD rules preserve the rights of individual end users over all others.

While the OTARD rules were drafted to address the issues raised by licensed services like satellite-delivered broadcast, in fact, in a recent FCC memorandum opinion and order issued by the FCC (*Promotion of Competitive Networks in Local Telecommunications Markets*, Order on Reconsideration, 19 FCC Rcd 5637, FCC 04-41 (rel. Mar. 24), in fact the terms apply to Wi-Fi networks as well, even though rather than operating in the point-to-point environment, unlicensed Wi-Fi networks serve multiple users in a network configuration that looks less like a cone (with the satellite at its peak and a footprint of users at its base) and more like a mesh of users.

As more people and organizations opt to receive communications from wireless devices, the conflict between those devices will only intensify. In airports, universities and other large campus settings, it is hoped that the parties involved can resolve their internal differences before resorting to a "higher authority."

However, as the FCC staff has made clear, the commission is that higher authority, and as such, takes its responsibilities seriously. Because of the internal operations and politics of the organization, this public notice has been written in such a way that should this issue become a *cause celebre*, in fact, the FCC has retained the right to back off if necessary.

For more information on the rules governing Over-the-Air Reception Devices, see 47 CFR Section 1.4000 (2004).

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