



PUBLIC NOTICE

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

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

DA 19-587

Released: June 24, 2019

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON AVIATION SPECTRUM RESOURCES, INC. PETITION FOR WAIVER OF PART 87 RULES TO ALLOW AERONAUTICAL ENROUTE SERVICE STATION USE OF LOWER 136 MHZ BAND

WT Docket No. 19-180

Comment Date: July 24, 2019

Reply Date: August 8, 2019

By this *Public Notice*, we seek comment on a request by Aviation Spectrum Resources, Inc. (ASRI) for waiver of sections 87.173(b) and 87.263(a) of the Commission's rules¹ to permit aeronautical enroute service stations to use the 136.000-136.4875 MHz band (the lower 136 MHz band).² ASRI seeks the waiver in order to provide both aeronautical operational control (AOC) and air traffic control data communications (ATC) to aircraft in flight.

ASRI is owned by U.S. airlines and other airspace users, and manages the aeronautical enroute service on behalf of the U.S. air transport industry.³ Aeronautical enroute service stations provide AOC communications, which pertain to "the safe, efficient and economical operation of aircraft, such as fuel, weather, position reports, aircraft performance, and essential services and supplies,"⁴ to aircraft along domestic and international air routes using the 136.4875-137.000 MHz band (the upper 136 MHz band).⁵ Part 87 designates the lower 136 MHz band for ATC communications, which are communications concerning "the safe, orderly, and expeditious flow of air traffic,"⁶ but makes no mention of AOC communications in connection with those frequencies.⁷

ASRI's waiver request relates to an issue that it raised previously in a 2018 petition for rulemaking, in which ASRI asked that the Commission amend part 87 to permit aeronautical enroute service stations to use the lower 136 MHz band to provide aeronautical operational control communications and air traffic control communications.⁸ ASRI stated in the petition for rulemaking that

¹ 47 CFR §§ 87.173(b), 87.263(a).

² See Petition of Aviation Spectrum Resources, Inc. for Waiver of Sections 87.173(b) and 87.263(a) of the FCC's Rules to Allow Use of the Lower 136 MHz Band by Aeronautical Enroute Service Stations (filed May 15, 2019) (ASRI Waiver Petition). The ASRI Waiver Petition supersedes a waiver petition regarding this matter filed by ASRI on April 30, 2019. *Id.* at 1 n.1.

³ *Id.*

⁴ 47 CFR § 87.261(a).

⁵ 47 CFR §§ 87.173(b), 87.261(a), 87.263(a)(1).

⁶ 14 CFR § 1.1.

⁷ 47 CFR § 87.173(b)

⁸ Petition of Aviation Spectrum Resources, Inc. for Amendment of Sections 87.173(b) and 87.263(a) of the FCC's Rules to Allow Use of the Lower 136 MHz Band by Aeronautical Enroute Stations, RM-11818 (filed Oct. 16, 2018)

this would support the Federal Aviation Administration's (FAA) modernization of the U.S. air transportation system known as the Next Generation Aviation System (NextGen).⁹ NextGen's Data Communications (Data Comm) component will permit certain repetitive and routine communications transmitted to aircraft to be shifted from voice to data transmission. The system will transmit digital data that includes both ATC communications and AOC communications over the entire 136-137 MHz band. Because part 87's bifurcation of the 136-137 MHz band into an upper 136 MHz band for AOC communications and a lower 136 MHz band for ATC communications does not accommodate NextGen's planned use of the entire 136-137 MHz band, the Commission recently proposed to amend sections 87.173(b) and 87.263(a) to permit aeronautical enroute service stations to use the lower 136 MHz band to provide both AOC and ATC communications, provided that the aeronautical enroute service station licensee and the FAA agree upon the specific frequencies and traffic sharing methodology.¹⁰

ASRI reports that Data Comm has already been successfully implemented nationwide for ground-based operations in the upper 136 MHz band,¹¹ and that the FAA plans to expand the program to include aeronautical enroute services in the near future.¹² ASRI expects to need access to the lower 136 MHz band by the end of 2019, so it seeks a limited waiver of sections 87.173(b) and 87.263(a) to avoid implementation delay while the rulemaking proceeding is pending.¹³ Specifically, it seeks a waiver to permit aeronautical enroute stations to transmit AOC and ATC communications on up to two of the twenty channels in the lower 136 MHz band.

We seek comment on the waiver request.

Procedural Matters

Interested parties may file comments and reply comments in response to the waiver request on or before the dates listed on the first page of this *Public Notice*. All pleadings must reference the docket number appearing on the first page of this *Public Notice*. Parties may file comments using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.¹⁴

- Electronic Filers: File comments electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

(ASRI Petition),

https://ecfsapi.fcc.gov/file/1016265213352/ASRI_Petition_for_Rulemaking_in_the_Lower_136_MHz_Band.pdf.

⁹ See *id.* at 1, 3-5.

¹⁰ See *Amendment of the Commission's Rules to Promote Aviation Safety, et al.*, Notice of Proposed Rulemaking, FCC 19-53, at 13, paras. 31-32 (June 7, 2019) (incorporating the ASRI Petition).

¹¹ In response to an FAA request, the Wireless Telecommunications Bureau's Mobility Division (Division) in 2018 clarified that part 87 permits aeronautical enroute service stations to transmit ATC as well as AOC communications in the upper 136 MHz band. See *Federal Aviation Administration, Order*, 33 FCC Rcd 6011, 6012-13, para. 6 (WTB MD 2018). The Division did not address the lower portion of the band.

¹² See ASRI Waiver Petition at 2-3.

¹³ See *id.* at 4, 10.

¹⁴ See *Electronic Filing of Documents in Rulemaking Proceedings*, Report and Order, 13 FCC Rcd 11322 (1998).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Address filings to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Deliver hand-delivered or messenger-delivered paper filings to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554 between 8:00 AM and 7:00 PM. Use rubber bands or fasteners to hold deliveries together. Dispose of all envelopes before entering the building.
- Send commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) to 9050 Junction Drive, Annapolis Junction, MD 20701.
- Send U.S. Postal Service first-class, Express, and Priority mail to 445 12th St., SW, Washington DC 20554.

The request, and comments and reply comments filed in response to this *Public Notice* are available for viewing via the Commission's Electronic Comment Filing System (ECFS) by entering the docket number appearing on the first page of this *Public Notice*. The documents also will be available for public inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street S.W., Room CY-A257, Washington, D.C. 20554. Reference Information Center business hours are available at <https://www.fcc.gov/general/fcc-reference-information-center>.

Alternate formats of this *Public Notice* (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY), or send an e-mail to fcc504@fcc.gov.

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

¹⁵ See 47 CFR §§ 1.1200(a), 1.1206.

For further information, contact Mr. Jeff Tobias of the Wireless Telecommunications Bureau, Mobility Division, at (202) 418-1617, jeff.tobias@fcc.gov.

Action by the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau.

- FCC -