



PUBLIC NOTICE

Federal Communications Commission
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DA 21-1625
December 21, 2021

NOTICE OF INTENT TO SHARE CONFIDENTIAL INFORMATION WITH THE FEDERAL AVIATION ADMINISTRATION

GN DOCKET NO. 18-122, RM-11791, RM-11778

In the *3.7 GHz Report and Order*, the Commission adopted rules to make 280 megahertz of mid-band spectrum in the 3.7-3.98 GHz band available for flexible use (plus a 20 megahertz guard band) throughout the contiguous United States.¹ The 4.2-4.4 GHz band, which is separated from the 280 megahertz wireless broadband segment by a 220 megahertz guard band, is allocated to Aeronautical Radionavigation and aeronautical mobile (route) services and is home to radio altimeters and Wireless Avionics Intra-Communications systems used on aircraft and helicopters.² Members of the aviation industry timely filed petitions for reconsideration of the Report and Order, arguing that the contemplated operations in the band would interfere with the use of radio altimeters on aircraft.³ They and other parties to the proceeding have submitted proprietary or commercially sensitive confidential materials in support of their respective positions, and have asked that the Commission to treat the materials as confidential under our rules.

The Commission is currently collaborating with the National Telecommunications and Information Administration (NTIA) and the Federal Aviation Administration (FAA) regarding co-existence between C-band wireless broadband and radio altimeters at 4.2-4.4 GHz. In this regard, the FAA has requested that the Commission provide it copies of the confidential materials relating to the technical rules for use of the band that have been filed in the above docket.

The Commission's regulations provide that the Commission may disclose to other Federal agencies records that have been submitted to the Commission in confidence upon another agency's request or upon the Commission's own motion.⁴ If it does, all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released "in the same manner and to the same extent" as they do to employees of the Commission.⁵

¹ See *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, *Report and Order and Order of Proposed Modification*, 35 FCC Rcd 2343, 2345, para. 4 (2020) (*3.7 GHz Report and Order*).

² See 47 CFR § 2.106; *3.7 GHz Report and Order*, 35 FCC Rcd at 2484, para. 390.

³ See Aerospace Industries Association, et al. Petition for Partial Reconsideration, GN Docket No. 18-122 (filed May 26, 2020), <https://ecfsapi.fcc.gov/file/10527379225572/C-BAND%20Petition%20for%20Recon.pdf>.

⁴ 47 CFR § 0.442(d).

⁵ 44 U.S.C. § 3510(b)(1).

The FAA states that, in accordance with the law, including 44 U.S.C. § 3510, it protects the confidentiality of business information provided to it.⁶ The FAA further states that it is its policy not to disclose confidential commercial information unless it is required by law or necessary to further a regulatory purpose.⁷

The FAA states that in the event of a request by a third party for the disclosure of information that FAA has directly received from the FCC, FAA will act in accordance with the Department of Transportation's Freedom of Information Act (FOIA) regulations and will consult with, or refer the matter to, the FCC as appropriate.⁸ The FAA states that, following consultation and absent referral, in response to a request from a third party for disclosure of confidential commercial information under the FOIA, the FAA will act in accordance with its stated policy and where applicable, will notify the submitter and ask them to submit any written objections to release.⁹ The FAA further states that in response to the FOIA request, it will assert all applicable exemptions from disclosure, including those exemptions set forth in 5 U.S.C. §§ 552(b)(4), (b)(7)(A). In addition, the FAA states it is its policy to use its best efforts to provide concerned parties with such notice as is practicable prior to the release of any confidential commercial information to a third party who requests it under any provision of law other than the FOIA. It also states that if confidential commercial information becomes the subject of discovery in any litigation to which the FAA is a party, it is the FAA's policy to use its best efforts to assure that a protective order applicable to the information is entered in the litigation, and to not voluntarily provide the information until concerned parties have had a reasonable opportunity to review and comment on the protective order and to apply to the court for all available legal protections.

Any entity that submitted materials relating to the technical rules for use of the 3.7-4.2 GHz band in this docket with a request for confidential treatment has ten (10) days from the date of this public notice to oppose disclosure to the FAA.¹⁰ If disclosure is opposed and the Commission decides to make the information available to the FAA, the procedures in section 0.442(d)(4) will apply.¹¹ If we receive no opposition, the Commission will disclose the information to the FAA subject to the requirements of 44 U.S.C. § 3510 and the confidentiality protections contained in the Commission's regulations. For avoidance of doubt, the FAA may not disclose the information to anyone other than the FCC, the owners of the information, and those who properly have access to the information through the protective order adopted in these dockets.¹²

Materials relating to the technical rules for the use of the 3.7-4.2 GHz band in this docket with a request for confidential treatment submitted after the date of this Public Notice will be provided to the FAA unless a specific request is made to not share the materials.

⁶ See Letter from Dorothy B. Reimold, Acting Deputy Associate Administrator, Office of Aviation Safety, FAA, to Joel Taubenblatt, Acting Bureau Chief, Wireless Telecommunications Bureau, FCC at 1 (Dec. 21, 2021).

⁷ The FAA defines "confidential commercial information" as trade secrets and confidential, privileged, and/or proprietary business or financial information submitted to DOT by any person. *Id.*

⁸ 49 CFR § 7.28.

⁹ 49 CFR § 7.29.

¹⁰ 47 CFR § 0.442(d)(1).

¹¹ 47 CFR § 0.442(d)(4) ("If disclosure is opposed and the Commission decides to make the records available to the other agency, the party who furnished the records to the Commission will be afforded ten calendar days from the date of the ruling to move for a judicial stay of the Commission's action. If the party does not move for stay within this period, the records will be disclosed.").

¹² *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, GN Docket No. 18-122, *Report and Order and Order of Proposed Modification*, Protective Order, 34 FCC Rcd 7700 (WTB 2019).

Pursuant to sections 1.415 and 1.419 of the Commission's rules, objections to the planned disclosure must be filed in GN Docket 18-122 on or before **January 3, 2022**.¹³ Objections and other comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020); <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Parties should also send a courtesy copy of their filing to Nellie Foosaner, Wireless Telecommunications Bureau at nellie.foosaner@fcc.gov.

For further information, please contact

- FCC -

¹³ 47 CFR §§ 1.415, 1.419.