

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
WORLD DATA PR INC.)	File Nos., 0003959230, 0003959248,
)	0003959251, 0003959254, 0003959257,
Applications for Base/Fixed Station Registrations)	0003959259, 0003959260, 0003959262,
in the 3650-3700 MHz Band under Nationwide,)	0003959264, 0003959267, 0004003606
Non-exclusive License Call Sign WQJ1716)	

MEMORANDUM OPINION AND ORDER

Adopted: February 22, 2011

Released: February 23, 2011

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny Neptuno Networks' (Neptuno's) Application for Review¹ of the December 22, 2009, order of the Wireless Telecommunications Bureau's Broadband Division (Division) finding that World Data had complied with the Commission's established rules and policies for the 3650-3700 MHz band (3650 MHz band).² Specifically, we affirm the Division's finding that World Data was not required to approach Neptuno in advance of World Data's registration of base/fixed stations in Puerto Rico.

II. BACKGROUND

2. World Data PR Inc. (World Data) and Neptuno each holds a nationwide, non-exclusive license for the 3650 MHz band.³ Under the Commission's rules for this band,⁴ the Commission licenses terrestrial operations on a nationwide, non-exclusive, *i.e.*, shared, basis with other 3650 MHz band licensees.⁵ The Commission adopted specific measures to address the potential for interference between and among non-exclusive licensees that may otherwise result from a shared, area-wide licensing regime.

¹ See *World Data PR Inc. Applications for Base/Fixed Station Registrations in the 3650-3700 MHz Band under Nationwide, Non-exclusive License Call Sign WQJ1716*, File Nos., 0003959230, 0003959248, 0003959251, 0003959254, 0003959257, 0003959259, 0003959260, 0003959262, 0003959264, 0003959267, 0004003606, Neptuno Networks Application for Review (filed Jan. 21, 2010) (Neptuno Application for Review).

² See *World Data PR Inc. Applications for Base/Fixed Station Registrations in the 3650-3700 MHz Band under Nationwide, Non-exclusive License Call Sign WQJ1716*, Memorandum Opinion and Order, 24 FCC Rcd 14648 (WTB, Broadband Div., Dec. 22, 2009) (*World Data Order*).

³ See *id.* at 14648-49, 14652, paras. 2, 9 n.36 (internal citations omitted).

⁴ See subpart Z of Part 90 of the Commission's Rules, 47 C.F.R. §§ 90.1301-1337 (Wireless Broadband Services in the 3650-3700 MHz Band).

⁵ 47 C.F.R. § 90.1307 (Licensing). Non-exclusive nationwide licenses serve as a prerequisite for registering individual fixed and base stations. *Id.*

Most relevant here, all applicants and licensees must cooperate in the selection and use of frequencies in the 3650 MHz band.⁶ A licensee in this spectrum band is not authorized to operate a fixed or base station under its nationwide license until registering that station in the Commission's Universal Licensing System (ULS).⁷ To facilitate the required cooperation and sharing, all registration data is available publicly, online, in ULS. Relative to license applications, the Commission's review of submitted registrations is limited (e.g., proximity of proposed stations to grandfathered satellite Earth stations, use of FCC-certified equipment), although registrations for some locations or facilities are subject to additional approvals (e.g., international coordination, Federal coordination, Environmental Assessment, Quiet Zone). A registration is not complete until it is in "Accepted" status and the nationwide license is updated on ULS.⁸

3. Between August 31 and October 23, 2009, World Data filed the above-captioned applications to register base/fixed stations in Puerto Rico under its nationwide 3650 MHz band license (Call Sign WQJI716).⁹ On September 15, 2009, and November 12, 2009, Neptuno filed petitions to deny the registration applications, claiming that World Data failed to comply with the Commission's sharing rule.¹⁰ At the request of the parties, on December 15, 2009, Commission staff held a meeting with counsel and senior representatives of each licensee.¹¹ When no resolution resulted from this meeting, the Division issued the *World Data Order*, denying the petitions to deny and rejecting Neptuno's allegations regarding World Data's compliance with the sharing rule.¹² The *World Data Order* also reiterated to the parties that the Commission's rules for the 3650 MHz band do not contain a first-in-time priority among terrestrial

⁶ See 47 C.F.R. § 90.1319(d). The Commission also requires that all equipment in the 3650 MHz band use "contention-based protocols," which "allow multiple users to share the same spectrum by defining the events that must occur when two or more devices attempt to simultaneously access the same channel and establishing rules by which each device is provided a reasonable opportunity to operate." *Wireless Operations in the 3650-3700 MHz Band*, ET Docket No. 04-151, WT Docket No. 05-96, Report and Order, 20 FCC Rcd 6502 at 6523, para. 58 (2005) (3650 MHz R&O), *recon. granted in part*, Memorandum Opinion and Order, 22 FCC Rcd 10421, 10431-37, at paras. 27-39 (2007) (3650 MHz MO&O); see 47 C.F.R. §§ 90.1319(b)-(c).

⁷ See 47 C.F.R. § 90.1307.

⁸ See Wireless Telecommunications Bureau Announces Start Date for Licensing and Registration Process for the 3650-3700 MHz Band, *Public Notice*, 22 FCC Rcd 19802, 19804, n.17 (WTB 2007).

⁹ See File Nos. 0003959230, 0003959248, 0003959251, 0003959254, 0003959257, 0003959259, 0003959260, 0003959262, 0003959264, 0003959267 (filed Sep. 8, 2009). On October 21, 2009, World Data amended each application, *inter alia*, to file copies of an agreement reached with a grandfathered Fixed Satellite Service Earth Station (except that World Data so amended File No. 0003959262 on October 23, 2009). Also, on October 21, 2009, World Data filed application File No. 0004003606.

¹⁰ Neptuno Networks, Petition to Deny File Nos. 0003951644, 0003951793, 0003959230, 0003959248, 0003959251, 0003959254, 0003959257, 0003959259, 0003959260, 0003959262, 0003959264, 0003959267 (filed Sep. 15, 2009); Neptuno Networks, Petition to Deny File No. 0004003606 (filed Nov. 12, 2009) (collectively, the petitions to deny).

¹¹ *World Data Order*, 24 FCC Rcd at 14651, para. 8 (internal citations omitted).

¹² *Id.* at 14653-55, paras. 13-15. In resolving the petitions to deny, the Division also addressed other arguments raised by Neptuno and World Data. See *World Data Order*, 24 FCC Rcd at 14652-53, paras. 9-12. Additionally, our Enforcement Bureau investigated and resolved Neptuno's complaint of unauthorized operation by World Data. See *id.* at 14653, para. ¶ 11 citing World Data, PR, Inc., Licensee of Radio Station WQJI716, San Juan, PR, *Notice of Violation*, NOV No. V201032680002) (rel. Nov. 20, 2009) (available at: <http://www.fcc.gov/eb/FieldNotices/2003/DOC-294807A1.html>) (*Violation Notice*). We do not address these issues here, but rather limit our review to those issues raised in the Neptuno Application for Review.

licensees and require all parties to cooperate to minimize interference.¹³ Subsequent to the issuance of the *World Data Order*, the above-captioned World Data registration applications were accepted.¹⁴

4. On January 21, 2010, Neptuno filed the instant Application for Review, seeking Commission review of the *World Data Order*. First, Neptuno argues that the Division improperly applied the sharing rule contained in Section 90.1319(d) of the Commission's rules.¹⁵ Although acknowledging that World Data took several unilateral steps that World Data claims were designed to minimize interference, Neptuno asserts that unilateral action is not sufficient to satisfy the rule's requirement that parties "cooperate" to avoid harmful interference to each other. Specifically, Neptuno claims that "parties that engage in unilateral acts do not, by definition, cooperate."¹⁶ Neptuno further argues that World Data needed to engage directly with Neptuno in order for World Data's base stations to be authorized by Commission staff,¹⁷ and that World Data was required to take such action "*before* World Data registered its base stations."¹⁸ Only once such action has occurred, Neptuno claims, would the requirement that a licensee "make[] every effort" to avoid harmful interference be met.¹⁹ Second, Neptuno argues that the Division exceeded its authority because the Commission has yet to provide guidance as to the proper interpretation of the sharing rule.²⁰ Finally, Neptuno requests that this proceeding be redesignated for *ex parte* purposes from a restricted to a permit-but-disclose proceeding.²¹

5. World Data filed an Opposition to the Neptuno Application for Review on February 4, 2010.²² First, World Data claims that the Division's interpretation of rule 90.1319(d) is consistent with the rule and the Commission's regulatory regime for the 3650 MHz band.²³ World Data states that, as the Division determined in the *World Data Order*, World Data complied with the rule by consulting the Commission's ULS database prior to filing the registrations at issue, as well as taking other actions designed to minimize harmful interference on other parties.²⁴ Second, World Data posits that the issue raised here is not new or novel and thus its resolution is within the scope of the Division's delegated

¹³ See *World Data Order*, 24 FCC Rcd at 14654-55, para. 15.

¹⁴ The Division rejected Neptuno's claims that accepting the World Data registration applications would violate the Commission's sharing rule for the 3650 MHz band. See *id.* at 14648, 14653-56, paras. 1, 13-15, 18.

¹⁵ Neptuno Application for Review at 3-9.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 5-6.

¹⁸ *Id.* at 7 (emphasis in original).

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9-10.

²¹ *Id.* at 2.

²² *World Data PR Inc. Applications for Base/Fixed Station Registrations in the 3650-3700 MHz Band under Nationwide, Non-exclusive License Call Sign WQJ1716*, File Nos., 0003959230, 0003959248, 0003959251, 0003959254, 0003959257, 0003959259, 0003959260, 0003959262, 0003959264, 0003959267, 0004003606, World Data Opposition to Application for Review (filed Feb. 4, 2010) (World Data Opposition to Application for Review).

²³ *Id.* at 3-9.

²⁴ *Id.* at 3-4.

authority.²⁵ Finally, World Data opposes Neptuno's request that the proceeding be redesignated a permit-but-disclose proceeding.²⁶

6. Neptuno filed a Reply to the World Data Opposition to Application for Review on February 16, 2010, in which it expounded on the argument put forth in the Neptuno Application for Review.²⁷ Notably, Neptuno argues that, pursuant to rule 90.1319(d),

new base station applicants are required to contact existing base station registrants *prior to* filing their applications and cooperate with them in devising a means for coexistence. . . . [R]equiring new base station applicants simply to reach out to previously registered, nearby base station operators and reach a reasonable accommodation with them before submitting their registration applications does not provide any leverage to existing band users or otherwise diminish their incentive to cooperate with new entrants in any way.²⁸

III. DISCUSSION

7. In the *World Data Order*, the Division applied a straight-forward interpretation of Commission rule 90.1319(d) in a manner fully consistent the Commission's orders adopting that rule. We therefore deny the Neptuno Application for Review.

8. In establishing the regulatory framework for the 3650 MHz band, the Commission determined that service providers would be licensed on a shared (*i.e.*, non-exclusive or co-primary) basis in a manner designed to encourage multiple providers. Specifically, the Commission "adopt[ed] rules that provide for nationwide, non-exclusive licensing of terrestrial operations. . . [and] adopted a streamlined licensing mechanism with minimal regulatory requirements [designed to] encourage multiple entrants."²⁹ To address interference issues, the Commission adopted technical requirements for service providers (*i.e.*, requiring service providers to use contention-based technologies).³⁰ The Commission expressly declined to provide terrestrial licensees with the interference protection rights of primary, exclusive use licensees. Rather, all licensees are authorized to operate on a co-primary basis, having equal rights to use the spectrum, with no priority given to first-in time users or applicants.³¹ Consistent with this approach, the Commission "impose[d] upon all licensees the *mutual* obligation to cooperate and avoid harmful interference to one another."³² The Commission further required that all licensees register their proposed

²⁵ *Id.* at 10.

²⁶ *Id.* at 10-11.

²⁷ *World Data PR Inc. Applications for Base/Fixed Station Registrations in the 3650-3700 MHz Band under Nationwide, Non-exclusive License Call Sign WQJ1716*, File Nos., 0003959230, 0003959248, 0003959251, 0003959254, 0003959257, 0003959259, 0003959260, 0003959262, 0003959264, 0003959267, 0004003606, Neptuno Networks Reply to Opposition to Application for Review (filed Feb. 16, 2010) (Neptuno Reply to Opposition).

²⁸ *Id.* at 3.

²⁹ *3650 MHz R&O*, 20 FCC Rcd at 6503, para. 1.

³⁰ *See 3650 MHz R&O*, 20 FCC Rcd at 6508, para. 16 ("Under this approach, terrestrial operations can operate in geographic areas of their own choosing and, because a contention-based protocol will control access to spectrum, terrestrial operations will avoid interference that could result from co-frequency operations."); *see also supra* n.6.

³¹ *3650 MHz R&O*, 20 FCC Rcd at 6513, para. 31.

³² *Id.* at 6508, para. 16 (emphasis added); *see id.* at 6513, para. 31.

fixed and base stations in ULS prior to providing service³³ and that all “[l]icensees should examine this database before seeking station authorization.”³⁴ Finally, any licensee causing or suffering from harmful interference is “expected to cooperate to resolve this problem by mutually satisfactory arrangements.”³⁵ In 2007, in response to various reconsideration petitions, the Commission affirmed the non-exclusive licensing scheme for the 3650 MHz band.³⁶

9. Here, the record reflects that World Data complied with the Commission’s sharing rule in the 3650 MHz band. World Data consulted ULS prior to filing its registration applications, as well as engineered its system (*e.g.*, deployed directional antennas) in a manner it believed would limit harmful interference to Neptuno.³⁷ Should any harmful interference have resulted for either Neptuno or World Data, our rules require that both parties cooperate to resolve the matter.³⁸ Our rules, contrary to Neptuno’s assertion, do not require World Data to affirmatively approach Neptuno and provide Neptuno with World Data’s engineering plans, prior to World Data even filing to register its equipment.³⁹ Rather, the Commission specifically declined to adopt this sort of coordination requirement that provides earlier registered stations interference protection from later registered stations.⁴⁰ The Division correctly recognized these Commission policies in applying the 3650 MHz band sharing rule and denying Neptuno’s petitions to deny in the *World Data Order*.⁴¹ We therefore affirm the *World Data Order*.

10. We reject as moot Neptuno’s request to redesignate the *ex parte* status of this proceeding. Nevertheless, we take this opportunity to emphasize, as the Division did, to the parties and to all other operators in the 3650 MHz band, the Commission’s prior determination that “[a]ll wireless licensees in the 3650 MHz band will have equal rights to the use of this spectrum (*i.e.*, no priority for first-in users), but all these licensees will have a mutual obligation to cooperate and avoid harmful interference to each another.”⁴² Further, should either Neptuno or World Data cause harmful interference to the operations of

³³ 47 C.F.R. § 90.1307.

³⁴ 47 C.F.R. § 90.1319(d).

³⁵ *Id.*

³⁶ *3650 MHz MO&O*, 22 FCC Rcd at 10429-30, paras. 21-26. The Commission modified the requirement that licensees use equipment with contention-based protocols, but those changes are not relevant here. *See id.*, at 10431-36, paras. 27-39.

³⁷ *See World Data Order*, 24 FCC Rcd at 14650-51, 14653, paras. 6, 13 (internal citations omitted); *see also* World Data Opposition to Application for Review at 3-4.

³⁸ *See* 47 C.F.R. § 90.1319(d). We note that the Application for Review contains no allegation of ongoing harmful interference by World Data. *See* Neptuno Application for Review.

³⁹ *Compare* 47 C.F.R. § 90.1319(d) *with* Neptuno Reply to Opposition at 3 (asserting that “new base station applications are required to contact existing base station registrants *prior to* filing their applications”) (emphasis in original); *see also* World Data Opposition to Application for Review at 4.

⁴⁰ *See 3650 MHz R&O*, 20 FCC Rcd at 6508, 6513, paras. 16, 31; *3650 MHz MO&O*, 22 FCC Rcd at 10428-30, paras. 20-23.

⁴¹ *See World Data Order*, 24 FCC Rcd at 14653-55, paras. 13-15; *see also supra* para. 3.

⁴² *3650 MHz R&O*, 20 FCC Rcd at 6513, para. 31; *World Data Order*, 24 FCC Rcd at 14654-55, para. 15 (quoting same).

the other or become aware of harmful interference, even if not intentionally caused, they must act in good faith to help eliminate the interference.⁴³

IV. ORDERING CLAUSE

11. ACCORDINGLY, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, that the Application for Review filed by Neptuno Networks on January 21, 2010, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁴³ 3650 MHz R&O, 20 FCC Rcd at 6512, para. 29.