

**Before the
FEDERAL AVIATION ADMINISTRATION
Washington, D.C. 20591**

In the Matter of)	
)	
Safe, Efficient Use and Preservation of)	Docket No. FAA-2006-25002
Navigable Airspace)	Notice No. 06-06
)	

COMMENTS OF THE CONSUMER ELECTRONICS ASSOCIATION

The Consumer Electronics Association (“CEA”) respectfully files these comments in response to the Federal Aviation Administration’s (“FAA”) Notice of Proposed Rulemaking in the above-captioned proceeding.¹

CEA is the principal trade association promoting growth in the consumer technology industry through technology policy, events, research, promotion and the fostering of business and strategic relationships. CEA represents more than 2,100 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, mobile electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. Combined, CEA’s members account for more than \$125 billion in annual sales.

CEA supports the comments and objections to the proposed rules requiring notice of potential electromagnetic interference (“EMI”) that have submitted in this proceeding by a variety of other interested parties, particularly those of the Federal Communications

¹ Safe, Efficient Use and Preservation of the Navigable Airspace, Docket No. FAA-2006-25002, *Notice of Proposed Rulemaking*, Notice No. 06-86 (rel. Jun. 1, 2006) (“*NPRM*”).

Commission. Although CEA member companies produce products that operate throughout the affected spectrum bands, and accordingly would be broadly affected the proposed EMI notice requirements, CEA submits these separate comments to address particular issues of importance to manufacturers and consumers of wireless devices for personal use.

Specifically, CEA is concerned that: (1) as other commenters have noted, the proposed rules would affect a wide variety of consumer devices, which operate primarily on an unlicensed basis in the affected spectrum bands; (2) it is unlikely that Congress intended the FAA to regulate such devices, and it is unclear that the FAA was aware or intended that its proposed rules would apply to such devices; and (3) it is unlikely that, even in the aggregate, consumer devices would cause interference to air navigation, radio communication, and/or surveillance facilities or equipment.

In light of the foregoing, CEA requests that, at a minimum, the FAA consider revising its proposed rules to tailor them narrowly to affect only those sources of EMI that cause actual interference to air navigation, communications, or surveillance. More generally, and from the standpoint of reasoned regulatory policy and administrative efficiency, CEA believes that the Federal Communications Commission, and not the Federal Aviation Administration, is the government agency best suited to address electromagnetic interference issues in this context.

THE PROPOSED RULES WOULD AFFECT A WIDE VARIETY OF UNLICENSED CONSUMER DEVICES

In the NPRM, the FAA proposes to require that notice be filed for “any construction of a new, or modification of an existing facility, i.e. – building, antenna

structure, or any other man-made structure, which supports a radiating element(s) for the purpose of radio frequency transmission” and operating on certain frequencies.² The affected frequencies include those used today by cellular, PCS, Wi-Fi, and WiMAX products. Tens, or even hundreds, of millions of U.S. consumers use these services today for voice and data communications and Internet access, and these services have become critical elements in our national communications infrastructure. The FAA should consider carefully any regulation that would, or could potentially, affect the development and use of these services.

Moreover, in at least the case of Wi-Fi and WiMAX, the proposed rules could easily be read to require consumer end-users to give notice when deploying a new personal wireless access point.³ Wi-Fi is already used today by millions of consumers for home networking, and WiMAX has the potential to dramatically expand broadband Internet access, particularly for rural geographic areas. The proposed regulation would require that millions of users register those devices with the government. CEA believes that this requirement is unnecessary, intrusive, and is unlikely to improve the safety of air travel.

IT IS UNLIKELY THAT CONGRESS INTENDED THAT THE FAA REGULATE CONSUMER WIRELESS DEVICES

The NPRM cites two sources from the legislative history of The Airport Airway Safety and Capacity Expansion Act of 1987 as the basis for its jurisdiction to issue rules

² *NPRM* at 19.

³ See Letter from Julius P. Knapp, Acting Director, Office of Engineering and Technology, Federal Communications Commission, to FAA at 3-4, Docket No. FAA 2005-25002 (Aug. 11, 2006) (“Knapp Letter”).

governing electromagnetic interference.⁴ Specifically, the NPRM notes that the House Conference Report on the Act states that “‘interference’ includes both physical and electromagnetic effects”.⁵ Second, the NPRM later observes that a legislative predecessor of the Act included language consisting of “Senate provisions, modified to clarify that requirements cover structures which would create electromagnetic interference.”⁶ CEA believes that neither the Act, nor the legislative history cited by the FAA, confers jurisdiction sufficient to permit regulation of consumer wireless devices.

Much has changed in the nearly 19 years since passage of the Act. In 1987, cellular telephone technologies had not reached anywhere near the level of deployment seen today. PCS telephony was on the horizon, but had similarly not yet seen any measure of widespread consumer adoption. Wi-Fi and WiMAX were theoretical constructs, at best. Congress could not have foreseen the impact that the Act would have on modern technology. Even if the relatively meager legislative history cited by the FAA constitutes a sufficient delegation of authority to regulate EMI generally, there is nothing in the Act or the legislative history to suggest that Congress intended the FAA to regulate unlicensed consumer wireless devices. Absent such a clear delegation, the FAA should proceed cautiously in this arena, if at all.

Further, it is unclear from the NPRM itself whether the FAA understands the potential breadth of its proposal. Indeed, interpreted conservatively, the notice requirement could be read to apply only to those electromagnetic emitters that rise some significant distance above ground and operate at relatively high power levels. For example, in describing the statutory basis for its EMI rules, the FAA cites a conference

⁴ Pub. L. No. 100-223 (December 30, 1987) (the “Act”).

⁵ *NPRM* at 7, citing H. Conf. Rep. 100-484 (December 15, 1987).

⁶ *NPRM* at 18, citing H.R. 2310 (1987).

substitute titled “*Tall Towers*”.⁷ Although CEA does not necessarily believe in the need for, or that the FAA necessarily has jurisdictional authority for, regulation of EMI even from these structures, it is unclear that the FAA gave reasonable consideration to the potential scope of its proposed rules. CEA does believe that these rules require notice by consumer users of unlicensed wireless devices, as discussed above.

NO ACTUAL INSTANCES HAVE BEEN PROVIDED THAT SHOW HOW CONSUMER DEVICES WOULD CAUSE INTERFERENCE TO AIR NAVIGATION, RADIO COMMUNICATION, AND/OR SURVEILLANCE FACILITIES OR EQUIPMENT

Notwithstanding the FAA’s apparent lack of jurisdiction to regulate cellular, PCS, Wi-Fi and WiMAX deployments, CEA is unaware of any existing problems that would make such regulation necessary in the first place. Although millions of devices operating in these services have been deployed to date, the NPRM does not cite any real-world examples of them causing interference to the nation’s air-transport communications or surveillance infrastructure. CEA is similarly unaware of any such instances to date.

Further, the consumer devices covered by the proposed rule typically operate at ground level and, as the FCC notes, emit low levels of effective radiated power.⁸ CEA believes that the FCC should offer at least some evidence of a real-world problem before taking precipitous regulatory action.

CONCLUSION

In light of the foregoing, CEA requests that the FAA reconsider its proposed rules concerning EMI. As written, the proposed rules implicate a wide range of consumer

⁷ *See id* (emphasis added).

⁸ *See* Knapp Letter at 4.

devices, based on limited statutory authority to do so, and in the absence of an actual or potential problem to be solved. From the standpoint of reasoned regulatory policy and administrative efficiency, CEA suggests that any future proposed EMI rules be undertaken by, or at least in more direct coordination with, the Federal Communications Commission. CEA believes that the FCC has the clear statutory authority and, more importantly, the experience and technical knowledge necessary, to ensure that any such rules ensure air safety without causing undue and unnecessary burdens to critical communications services.

Respectfully submitted,

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