

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

In the Matter of)	
)	
Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems)	WT Docket No. 22-323
)	
Petition of AIA for Rulemaking to Adopt Service Rules for Unmanned Aircraft Systems Command and Control in the 5030-5091 MHz Band)	RM-11798 (terminated)
)	

COMMENTS OF THE NEWS MEDIA COALITION

I. INTRODUCTION AND SUMMARY

The News Media Coalition (Coalition) submits these comments in the above-captioned proceeding regarding the Federal Communication Commission’s (FCC) proposal to allow unmanned aircraft systems (UAS or drones) to conduct licensed operations in the 5030-5091 MHz spectrum band.¹

The Coalition consists of nearly two dozen news media organizations² with the shared experience that sound policies and regulations enable journalists to gather and report on matters of public concern in ways unattainable through on-the-ground reporting. The Coalition has

¹ *Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems*, Notice of Proposed Rulemaking, WT Docket No. 22-323, FCC 22-101 (NPRM).

² Coalition members include Advance Publications, Inc., American Broadcasting Companies, Inc., American Society of Media Photographers, The Associated Press, Capitol Broadcasting Co., Gannett Co., Inc., Getty Images (US), Inc., Gray Television, Inc., Media Law Resource Center, National Press Photographers Association, NBCUniversal Media, LLC, News/Media Alliance, Nexstar Media Group, Inc., The New York Times Company, Radio Television Digital News Association, Reporters Committee for Freedom of the Press, The E.W. Scripps Company, Sinclair Broadcast Group, Inc., Society of Professional Journalists, TEGNA, Inc., TelevisaUnivision, Inc., and WP Company LLC.

participated in drone rulemaking proceeding before the Federal Aviation Administration³ and the best practices multi-stakeholder deliberations convened by the White House through the National Telecommunications and Information Administration.⁴ The news media industry has eagerly helped to shape sensible measures that provide paramount protections for public safety while encouraging new uses of drone technology in a First Amendment-friendly regulatory environment.

The Coalition appreciates the FCC's efforts to foster the continued growth of drone operations consistent with these same goals, and it welcomes the opportunity to help inform the Commission's efforts.

As an initial matter, the Coalition appreciates the FCC's commitment to making use of the 5030-5091 band voluntary. NPRM ¶ 12. Dedicating a band of spectrum to be available on a voluntary basis will allow for enhanced UAS operations while minimizing burdens and maximizing flexibility for operators. The Coalition still encourages the FCC, however, to craft its regulations with an eye toward allowing a greater number of drone operators the opportunity to reap the benefits of licensed operations. Bearing this in mind, the Coalition focuses its

³ Comments of the News Media Coalition, *Operation and Certification of Small Unmanned Aircraft Systems*, Docket No. FAA-2015-0150 (Apr. 24, 2015), <https://www.regulations.gov/comment/FAA-2015-0150-4534>; Comments of the News Media Coalition, *Safe and Secure Operations of Small Unmanned Aircraft Systems*, Docket No. FAA-2018-1086 (Apr. 15, 2019), <https://www.regulations.gov/comment/FAA-2018-1086-1828>; Comments of the News Media Coalition, *Operation of Small Unmanned Aircraft Systems Over People*, Docket No. FAA-2018-1087 (Apr. 15, 2019), <https://www.regulations.gov/comment/FAA-2018-1087-0916>; Comments of the News Media Coalition, *Remote Identification of Unmanned Aircraft Systems*, Docket No. FAA-2019-1100 (Mar. 2, 2020), <https://www.regulations.gov/comment/FAA-2019-1100-39439>.

⁴ See *Voluntary Best Practices for UAS Privacy, Transparency, and Accountability*, NTIA (May 18, 2016), https://www.ntia.doc.gov/files/ntia/publications/uas_privacy_best_practices_6-21-16.pdf,

comments on a few primary points, including (1) access to, and assignment of, spectrum in the 5030-5091 should be efficient and flexible; (2) the information operators are required to provide in order to access the spectrum should be weighed against the legitimate privacy interests of operators; (3) dynamic frequency management systems (DFMS) should be encouraged to adopt fee structures that do not make operations cost-prohibitive for operators; and (4) the FCC should allow UAS operators to obtain VHF licenses.

II. NEWSGATHERING OPERATIONS RAISE UNIQUE CONSIDERATIONS AS COMPARED TO OTHER COMMERCIAL DRONE OPERATORS THAT THE FCC SHOULD CONSIDER IN CRAFTING THESE REGULATIONS

Newsgatherers engage in drone operations that differ in a few critical ways from typical commercial drone activities. As an initial matter, journalists frequently begin drone operations in response to breaking news events. Obviously, breaking news is unpredictable and journalists frequently have little lead time to prepare and often do not know until the last minute where they will launch a news drone. The regulation of news drone operations must, therefore, remain nimble to accommodate the rapidly changing needs of drone journalists.

In addition, news organizations face new and evolving threats to their safety. It is no secret that journalists are increasingly at risk simply for providing the public with news and information in the public interest.⁵ Therefore to protect the physical safety of their drone journalists, and the confidentiality and integrity of their operations, the Coalition is particularly sensitive to any regulations that could require them to provide their employees' personal

⁵ See, e.g., Michael Martin, *Although the killing of journalists is rare in the U.S., threats of doing so are not*, NPR.org (Sept. 10, 2022), <https://www.npr.org/2022/09/10/1122234724/although-the-killing-of-journalists-is-rare-in-the-u-s-threats-of-doing-so-are-n>.

identifying information (PII) and that contemplate the sharing of their PII and operational planning with others, whether the public or law enforcement.

A. The FCC Should Enable Efficient, Flexible Frequency Assignments for Non-Networked Access (NNA) Operations

The Commission notes that it intends to rely on DFMS to provide “timely, efficient, and cost-effective” access to spectrum. NPRM ¶ 26. The Coalition supports these goals. As the Commission acknowledges, currently drone operators can obtain “near real-time airspace authorization for operations under 400 feet in controlled airspace around airports” via the Federal Aviation Administration’s (FAA) Low Altitude Authorization and Notification Capability (LAANC) system. *Id.* ¶ 40. Access to the 5030-5091 by NNA operations should similarly occur in “near real-time.” Similarly, the Commission should ensure, as it proposes, that operators have the flexibility to “deviate from [their] anticipated flight path.” *Id.* ¶ 36.

Newsgathering operations are, in large part, driven by a need to follow the news. Although at times news organizations report on matters with advance planning, very often journalists learn of a breaking story and need to mobilize quickly—and frequently these needs arise in areas with limited, or non-existent, network coverage. The Coalition recognizes that there must be some mechanism to ensure orderly operations in the licensed band, but the Coalition encourages the Commission to develop policies that do not inadvertently preclude newsgatherers and others from utilizing the space in high-stakes, evolving situations.

For example, there is significant value in ensuring that in emergency situations, newsgatherers can safely utilize licensed airspace along with first responders. But requiring UAS operators in these scenarios to provide precise flight plans in advance (*Id.* ¶ 34), will likely

lead to difficulty utilizing licensed airspace.⁶ Although it may make sense for the Commission to require operators to provide some information in advance regarding their flight operations so that use of the 5030-5091 band can be optimized, any requirement for such information should allow for some built-in deviation in terms of the intended operation.⁷ Similarly, the Commission should consider ways to enable access to the 5030-5091 band even if network connectivity is lacking or unstable.

B. The FCC Should Balance the Need for Information from Drone Operators Against the Privacy Interests of Operators

The Commission seeks comment on various aspects of information gathering and sharing with respect to licensed drone operations. *See* NPRM ¶¶ 31-36. As the FCC considers this aspect of its regulations, it should keep in mind a few guiding principles.

First, whatever newsgathering tool they use, journalists have an utmost interest in conducting operations without surveillance by the government or by the subjects of news reporting. Although the Coalition recognizes that the Commission must require operators to provide *some* information to obtain access to licensed spectrum, the Commission should require operators to share *only* the information necessary to ensure safe and orderly operations in the licensed airspace.⁸ For example, the FCC asks whether UAS operators should be required to

⁶ In fact, the Coalition notes that it previously opposed the FAA's efforts to require journalists operating in Class G Airspace to file their flight plans on the basis that requiring precise flight plans raises serious freedom of the press constitutional concerns. *See* Comments of the News Media Coalition, *Remote Identification of Unmanned Aircraft Systems*, Docket No. FAA-2019-1100 (March 2, 2020), <https://www.regulations.gov/comment/FAA-2019-1100-39439>.

⁷ The Coalition appreciates, however, that the FCC recognizes its regulations should guard against the ability of any particular operator(s) to monopolize the licensed spectrum by requesting long-term use of a frequency. NPRM ¶ 35.

⁸ The approach aligns with the approach outlined in the final report of the FAA's Beyond Visual Line of Sight (BVLOS) Advisory Rulemaking Committee, which encouraged the FAA to

provide to the DFMS “ground station geographic location” or “specific information about the UA, including its manufacturer, model, or other technical or identifying information.” *Id.* ¶ 32. These types of requirements raise unique concern for journalists who may be asked to disclose sensitive newsgathering information that could be used to undermine their activities, including the location of the journalist operating the drone or the type of camera on board. Although some of this information may be necessary, the Commission should not, for example, require operators to disclose things like whether a newsgathering drone has a particular video camera on board.⁹

Second, the Commission should be mindful of any data-sharing or data-retention requirements imposed on DFMS administrators. *See id.* ¶ 31. The Coalition understands the Commission’s need for a mechanism by which it can receive information maintained by DFMS, but the Coalition cautions that there are privacy interests that must be balanced against that need. For example, the news media has a unique and nuanced relationship with law enforcement. Journalists and law enforcement work in tandem to keep the public informed and safe. At the same time, however, journalists take seriously their role as the independent, Fourth Estate watchdog on government, which requires that journalists at times investigate the conduct of government officials and law enforcement officers. In crafting regulations regarding the

recognize that “transparency comes at a cost to privacy of BVLOS operators and customers and . . . consideration must be given for how much transparency is needed to mitigate security risks and address privacy concerns.” Aviation Rulemaking Committee Final Report, *Unmanned Aircraft Systems Beyond Visual Line of Sight* 59 (Mar. 10, 2022), https://www.faa.gov/regulations_policies/rulemaking/committees/documents/index.cfm/document/information?documentID=5424.

⁹ The Coalition also notes that the Commission sought comment on how it should evaluate foreign-ownership holdings of drone operators. Notice ¶ 53. The Coalition takes no position on how or whether the FCC should assess foreign ownership overall, but does urge the FCC to ensure that any regulation does not require an entity that has already complied with FCC foreign ownership rules (e.g., has obtained a Section 310(b)(4) ruling to exceed foreign ownership in a broadcast license) to comply with *further* foreign ownership rules.

information operators are required to provide to DFMS, the Commission should guard against allowing law enforcement officers access to information identifying journalists,¹⁰ which would have the very real potential to act as a de facto prior restraint on certain types of coverage, chilling the reporting of stories of great public importance.

Third, requiring DFMS to assess an operator’s compliance with FAA regulations is unnecessary and unduly burdensome. As the Commission notes, drone operators are required to comply with various FAA regulations, and the FCC should not require that DFMS confirm the operators’ compliance with these regulations. *See* NPRM ¶ 41. Requiring this would be time-consuming and redundant for operators without any added benefit to the use of the 5030-5091 band.

C. DFMS Fees Should Not be Cost-Prohibitive

The Commission seeks comment on how it should authorize “reasonable usage-based fees.” *Id.* ¶ 38. The Coalition appreciates the Commission’s sensitivity to imposing costs on drone operators. Several Coalition members have dozens of drones in their fleets, and with the passage of time, news organizations will likely only continue to increase the number of drones they operate. Unlike some other commercial drone operations, like package delivery, newsgatherers cannot directly pass on the cost of their operations to consumers. Therefore, the Coalition encourages the Commission to consider what is “reasonable” in light of the fact that

¹⁰ In fact, United States Attorney General Merrick Garland in 2021 issued a memorandum announcing that, as a matter of federal law enforcement policy, the Department of Justice will “no longer use compulsory legal process” to obtain records from journalists “acting within the scope of newsgathering examples,” and directing a review of regulations to “explain, develop and codify” these protections for journalists in regulations. Memorandum from The Attorney General, *Use of Compulsory Process to Obtain Information From, or Records Of, Members of the News Media* (July 19, 2021), https://www.justice.gov/d9/2022-12/media_memo_07-19-2021.pdf.

there is likely a meaningful difference in what is “reasonable” for different types of operator, and smaller, or less profitable, operators, should not be precluded from operating in licensed airspace merely because the associated fees are “reasonable” to some entities.


III. THE FCC SHOULD ALLOW UAS OPERATORS TO OBTAIN LICENSES IN THE AERONAUTICAL VHF BAND

The Coalition supports the FCC’s proposal to allow drone operators to receive licenses in the aeronautical VHF band so that they may more efficiently communicate with other aircraft. NPRM ¶ 151. News organizations frequently operate drones in breaking news scenes in tandem with multiple other aircraft, including emergency responders and television helicopters. Adding UAS operators to the VHF communications would likely contribute to the safety of this airspace.

CONCLUSION

The Coalition recognizes that gathering the news from the air involves safety and security considerations that drone operators must take into account when operating in the national airspace system, and it thanks the FCC for developing policies that further the growth of the UAS industry. The Coalition appreciates the opportunity to participate in this important regulatory process, and it looks forward to working with the FCC and other industry stakeholders as we move forward toward expanding the use of drones in new and exciting ways.

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