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October 10, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Notification*

Promoting Investment in the 3550-3700 MHz Band, GN Docket No. 17-258

Petitions for Rulemaking Regarding the Citizens Broadband Radio Service, RM-11788, RM-11789

Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354

Dear Ms. Dortch:

On October 5, 2017, Russell Fox of Mintz Levin and I spoke with Erin McGrath, Legal Advisor to Commissioner O'Rielly regarding the 3550-3700 MHz band ("3.5 GHz band") Citizens Broadband Radio Service ("CBRS") and the draft *Notice of Proposed Rulemaking and Order Terminating Petitions*^{1/} released October 3, 2017.

We stated that we were generally pleased with the *Draft NPRM and Order*, which was responsive in most instances to the Petition for Rulemaking submitted by T-Mobile.^{2/} Making changes to the CBRS rules as suggested in *Draft NPRM and Order* will spur additional investment in the 3.5 GHz band and better facilitate the band's use for Fifth Generation wireless broadband ("5G") operations. These actions will also complement the Commission's efforts to make mid-band spectrum in other portions of the 3 and 4 GHz range available for 5G.^{3/}

^{1/} *Promoting Investment in the 3550-3700 MHz Band; Petitions for Rulemaking Regarding the Citizens Broadband Radio Service, Draft Notice of Proposed Rulemaking and Order Terminating Petitions, GN Docket No. 17-258, RM-11788, RM-11789, FCC-CIRC1710-04 (rel. Oct. 3, 2017) ("Draft NPRM and Order").*

^{2/} T-Mobile USA, Inc. Petition for Rulemaking, GN Dkt. No. 12-354, RM-11789 (filed June 19, 2017) ("Petition").

^{3/} *See Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz, GN Docket 17-183, Notice of Inquiry, 32 FCC Rcd. 6373 (2017).*

We expressed disappointment, however, with the *Draft NPRM and Order*'s treatment of two issues raised in the T-Mobile Petition – the potential use of Priority Access Licenses (“PALs”) throughout the 150 megahertz of spectrum in the 3.5 GHz band and the change in effective isotropic radiated power (“EIRP”) limits for Citizens Broadband Radio Service Devices (“CBSDs”). We stated that adopting an Order rejecting the two recommendations rather than seeking comment on them is unnecessary and contrary to Commission precedent, and would prevent development of a complete record on the issues raised.

While the Commission may not yet be prepared to propose the rule changes proposed by T-Mobile, adopting an Order dismissing them – without further opportunity for public comment – is the wrong approach. In other Notices of Proposed Rulemaking (“NPRMs”), the Commission has routinely stated tentative conclusions *not* to take a particular action, but nonetheless, in order to develop a more complete record, sought comment on its proposed course.^{4/} The Commission should take the same path here.

There is good reason why the Commission should seek further comment on T-Mobile's proposals, just as it has in previous similar cases. *First*, rejecting the proposals in an Order unnecessarily forecloses Commission consideration of alternatives to the solutions that we recommended. An Order assumes that there are only two alternatives to the issues raised – the current rules and our proposal. But the matters raised in the *Draft NPRM and Order* are complex and development of a more complete record may produce other ways to address those matters. For example, the Commission may wish to ask if there are alternatives, aside from the current rules, to T-Mobile's suggestion that the Commission permit PAL usage throughout the entire band. Concerns regarding General Authorized Access sharing with PAL holders, if any, could be more fully explored in an NPRM. An NPRM could also assess ways to ensure that spectrum is made available for local use (for example, in factory or campus settings), even if it is held by a Priority Access licensee. Similarly, the Commission may wish to ask if there are some areas – outside exclusion zones, for example – where CBSD power could feasibly be higher. Adoption of an Order rejecting T-Mobile's proposals, however, prevents the development of a complete record on these issues – development that would be more consistent with the public interest.

Second, considering the issues we raised in the context of an NPRM, instead of simply dismissing them in an Order, would be procedurally more streamlined and result in the resolution

^{4/} See, e.g., *Amendment of Part 15 of the Comm'n's Rules*, Notice of Proposed Rulemaking and Order, 31 FCC Rcd. 1657, ¶ 30 (2016) (“[Certain parties] suggest changing the required geo-location accuracy for white space devices from +/-50 meters to +/-100 meters. . . . [W]e tentatively conclude that it is not necessary[.] . . . We seek comment on this tentative conclusion.”); *Permissive Use of the “Next Generation” Broad. TV Std.*, Notice of Proposed Rulemaking, 32 FCC Rcd. 1670, ¶ 62 (2017) (“[W]e tentatively conclude that as long as the synchronization used to implement an [Single Frequency Networks/Distributed Transmission Systems] minimizes interference within the network and provides adequate service, then there is no need to require a specific synchronization standard. We seek comment on this tentative conclusion.”); *Serv. Rules for 698-746, 747-762 and 777-792 MHz Bands et al.*, Third Further Notice of Proposed Rulemaking, 23 FCC Rcd. 14301, ¶ 73 (2008) (“We tentatively conclude that it would not serve the public interest to change the current rule governing D Block partitioning and disaggregation, and thus to continue prohibiting any partitioning and disaggregation of a D Block license. We seek comment on this conclusion.”).

of all matters governing the 3.5 GHz band at once. If the *Draft NPRM and Order* is adopted as proposed, and we wished to continue to seek consideration of our tentatively rejected proposals, we would be required to file a petition for reconsideration of the Order. This would create a separate path for the consideration of those two proposals – distinct from all the other issues addressed in the NPRM. Parties on all sides of the issues in this proceeding have urged the Commission to finalize rules governing the 3.5 GHz band.^{5/} It would be more responsive to those requests to avoid creating two separate procedural paths and to consider all issues at once in the NPRM.

Moreover, there would be reasonable grounds for T-Mobile to seek reconsideration of an Order based on the draft circulated. For example, the Commission is simply wrong in its conclusion that “T-Mobile presents no compelling evidence”^{6/} for the Commission to change its approach regarding designation of the entire band for PAL use. Among other things, our Petition was replete with examples of other countries targeting the 3.5 GHz band for 5G operations and arguments regarding global harmonization.^{7/} The *Draft NPRM and Order* also ignores arguments regarding the need for wider bandwidths for 5G communications.^{8/} Those are changed factors that the Commission failed to consider in reaching its tentative conclusion. Finally, the Commission’s finding of “no compelling evidence” ignores the fact that responses to petitions for rulemaking are often limited because parties wait until an NPRM is issued to participate in a proceeding. More parties will likely participate in response to the NPRM. To ensure a more fully developed record, the public interest favors permitting parties to address these issues in the NPRM.

Pursuant to Section 1.1206(b)(2) of the Commission’s rules, an electronic copy of this letter is being filed in the above-referenced dockets. Please direct any questions regarding this filing to me.

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey

Vice President, Government Affairs

Technology and Engineering Policy

cc: Erin McGrath

^{5/} See, e.g., Google Inc. *Ex Parte*, GN Docket No. 12-354, RM-11788, RM-11789, Presentation at 6 (filed Sept. 21, 2017) (stating that “[r]ule changes must not delay upcoming deployments”); CTIA *Ex Parte*, GN Docket No. 12-354, RM-11788, RM-11789, at 1-2 (filed Oct. 5, 2017) (urging the Commission to move forward quickly on various proposals without delaying access to the 3.5 GHz band).

^{6/} *Draft NPRM and Order*, ¶ 59.

^{7/} Petition at 5-7.

^{8/} Petition at 9, 21-22.