



October 17, 2019

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Order and Notice of Proposed Rulemaking*, GN Docket No. 18-122

Dear Ms. Dortch:

On October 15, 2019 Michael Calabrese, representing the Open Technology Institute at New America (OTI), met with Commissioner Geoffrey Starks and his Chief of Staff and Senior legal Advisor William Davenport, with reference to the above-listed proceeding.

I began by thanking Commissioner Starks for expressing his concerns about the possibility of a private auction to reallocate C-band spectrum. I reiterated the adamant opposition of the Public Interest Spectrum Coalition (PISC) to Commission authorization of any form of private sale or privately-run auction and explained why this would be both unlawful and bad policy. I summarized the legal analysis that OTI filed in response to the first C-band *Public Notice*, demonstrating that a private auction would violate Section 309(j) regardless of whether that authorization was conditioned on FCC-like protections and/or a contribution of some share of revenue to the Treasury.¹ I also summarized the proposal for a public auction included in OTI's July 3 Public Notice comments.

I reiterated that a private auction or sale would willfully ignore Congressional intent and precedent. The Commission has no legal authority to authorize, let alone oversee, a private auction. General provisions such as Sections 303(c), 303(r) and 4(i) cannot possibly provide the authority for a public or private auction that is not consistent with the explicit provisions of Section 309(j).

Finally, I noted that both PISC and the Broadband Connects America coalition, in their respective filings, strongly supported the Commission's proposal to authorize point-to-multipoint (P2MP) fixed wireless broadband providers to coordinate shared use of the upper portion of the band that remains allocated to the Fixed Satellite Service. I noted that the Reed Engineering Study filed by WISPA, Microsoft

¹ See Comments of the Open Technology Institute at New America, Public Notice, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Order and Notice of Proposed Rulemaking*, GN Docket No. 18-122, at 15-17 (July 3, 2019).

and Google conclusively demonstrates the feasibility of coordinated sharing between fixed point-to-multipoint (P2MP) operators and existing earth stations on *every megahertz* of the ongoing FSS band in a majority of rural, Tribal and small town communities where it's most needed. The Reed Study further confirms that coordinated access to unused spectrum in the 3.7-4.2 GHz band can serve as the foundation for high-capacity fixed wireless broadband services in most rural and underserved areas with no harmful interference to incumbent FSS licensees.²

Respectfully submitted,

/s/ *Michael Calabrese*
Director, Wireless Future Project
Open Technology Institute/New America
740 15th Street, NW - 9th Floor
Washington, DC 20005

cc: William Davenport

² See Comments of the Public Interest Spectrum Coalition, Public Notice, *Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Order and Notice of Proposed Rulemaking*, GN Docket No. 18-122, at 15-17 (August 7, 2019)..