



February 13, 2020

Chairman Ajit Pai
Federal Communications Commission 445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, IB Docket No. 11-109; IBFS File Nos. SES-MOD-20151231-00981, SAT-MOD-20151231-00090, and SAT-MOD-20151231-00091, SAT-AMD-20180531-00044, SAT-AMD-20180531-00045, SES-AMD-20180531-00856

Dear Chairman Pai:

Public Knowledge (PK) write to emphasize recent statements by Attorney General Barr on the importance of moving quickly to grant Ligado's Petition in the above captioned proceedings. In a recent interview on the Administration's 5G policy, the Attorney General praised Chairman Pai's "FAST 5G" Plan and emphasized the importance of implementing the plan to bring the benefits of 5G as swiftly as possible to the American people. In particular, with regard to use of the L-Band, Attorney General Barr stated the L-band, "could dramatically reduce the number of base stations required to complete national coverage."¹

What the Attorney General didn't highlight was that the needless delay in the FCC's action comes not from any genuine engineering dispute or other practical difficulty, but from the Department of Defense's (DoD) repeated objections without new engineering evidence, and willingness to circumvent traditional process for resolving spectrum policy issues through participation with NTIA. As PK stated in a letter last December:

"It is imperative, therefore, that the Commission send a strong message that it will not reward bad faith efforts to undermine our national federal spectrum, our global competitiveness, and our digital future. By acting swiftly to resolve

¹ Attorney General William P. Barr Delivers the Keynote Address at the Department of Justice's China Initiative Conference (February 6, 2020) <https://www.justice.gov/opa/speech/attorney-general-william-p-barr-delivers-keynote-address-department-justices-china>.

Ligado’s pending application, the Commission will not only move a step closer to putting more spectrum into productive use and encouraging an innovative potential new entrant. It will protect the integrity of the spectrum reallocation process going forward, discouraging federal agencies from seeking endless delays on the basis of vague concerns, impractical standards, and an utter absence of substantive engineering analysis.”²

The DOD’s repeated violation of the legal requirement that NTIA acts as the coordinator and representative of the Executive Branch on matters relating to federal spectrum use, and the Acting NTIA Administrator’s acquiescence in these violations, sets a dangerous precedent for future spectrum proceedings. Normalizing the circumvention of the NTIA has emboldened other Federal agencies to do the same. Indeed, the breakdown of the orderly process of by which Executive agencies coordinate policy through NTIA has raised concerns in Congress. In a joint letter to the Government Accountability Office (GAO) requesting a review of NTIA’s management of federal spectrum, Commerce Committee Chairman Frank Pallone (D-NJ) and Ranking Member Greg Walden (R-OR) observed that the “federal spectrum process [has] broke[n] down” and “that many federal agencies with spectrum may have circumvented this statutory process.” As a result, “inefficient and chaotic processes ensued,” compromising U.S. leadership in spectrum policy and undermining the important rolls of both the FCC and NTIA as “neutral arbiters” of non-federal and federal spectrum use.³

As PK highlighted in December, DoD’s actions are particularly egregious here because “the spectrum access rights at issue are entirely covered by existing Commission licenses, and are not subject to federal use, federal agencies have no special status in these proceedings.” While the reliability of GPS both commercially and for federal users is of the utmost importance, the agencies have not produced a study that shows any meaningful interference.⁴ The Commission is the sole arbiter in disputes over commercial uses of spectrum.⁵ While NTIA has been designated to speak at the FCC on behalf of the Federal Government’s role as a spectrum user, neither NTIA or the DoD have veto power over commercial uses of spectrum. In this proceeding the FCC has time and time again watched as federal agencies refuse to cooperate with established policies and procedures, while Ligado has participated in good faith.

² Letter to Chairman Pai Re: Ligado License Modification Applications, IB Docket No. 11-109; 12-340 (December 16, 2019).

³ Letter of Chairman Frank Pallone and Ranking Member Greg Walden to Gene L. Dorado, Comptroller General of the United States (January 24, 2020). Available at: https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/GAO.1.24.2020.%20Letter%20re%20GAO%20NTIA%20Spectrum%20Management%20Letter.CAT_.pdf

⁴ U.S. Department of Transportation Global Positioning System Adjacent Band Compatibility Assessment (April 2018) <https://www.transportation.gov/sites/dot.gov/files/docs/subdoc/186/dot-gps-adjacent-band-final-reportapril2018.pdf>.

⁵ See 47 U.S.C. §303. *See also Head v. New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424, 430 n.6 (1963) (affirming that the jurisdiction of the FCC over technical matters associated with the transmission of radio signals “is clearly exclusive”); *New York SMSA Ltd. P’ship v. Town of Clarkstown*, 612 F.3d 97, 100 (2d Cir. 2010) (Congress “intended the FCC to possess exclusive authority over technical matters related to radio broadcasting”); *Broyde v. Gotham Tower, Inc.*, 13 F.3d 994, 997 (6th Cir. 1994) (discussing “the FCC’s exercise of exclusive jurisdiction over the regulation of radio frequency interference”).

PK therefore urges you to move as quickly as possible to circulate an Order resolving Ligado's longstanding Application for license modification.

Sincerely,

xHarold Feld
Senior Vice President

cc: Commissioner Starks
Commissioner Rosenworcel
Commissioner Carr
Commissioner O'Rielly