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**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

**EX PARTE**

Re: Dockets 18-22 and 18-21

Dear Ms. Dortch:

This is to document a meeting I had on April 10, 2018 with Mr. Umair Javed of Comm. Rosenworcel's staff. The purpose of the meeting was to review Docket 18-22 issues but Docket 18-21 was briefly mentioned. My comments on 18-21 were fully consistent with my previous *ex parte* filing of February 2, 2018.<sup>1</sup>

On Docket 18-22 I made the following points:

- Unlike the former Pioneer's Preference program, Section 7 is an integral part of the Communications Act that has been ignored by FCC for 35 years
- Oddly, in that 35 years FCC has not identified a single new technology.
- When the ATSC petitioners sought Section 7 treatment in the original petition in Docket 16-142, FCC totally ignored the request and the petitioners never mentioned it again. This raised the question of whether FCC staff warned the petitioners they should never raise this issue but that as major regulatees they were inherently entitled as a "professional courtesy" to fast action on one petition a year.
- When a client consulted with a prominent spectrum attorney in preparation for filing a petition for rulemaking for a major innovation, the attorney warned them that if they raised the Section 7 issue the Commission staff would punish them by delaying action more than usual. The petitioner did not raise the Section 7 issue and still it took 4 years for FCC to issue an NPRM in this matter.

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<sup>1</sup> <https://ecfsapi.fcc.gov/file/1020296397970/2%202%2018%2018-21%20ex%20parte%20.pdf>

- If the Commission questions if any new technologies were delayed by inattention to Section 7 issues, look no further than the 3 petitions cited in the header of the Docket 18-21 NPRM that deal with 95+ GHz technology, not to mention the additional waiver request dismissed in para. 93 of the NPRM.
- Perhaps the Commission's new Office of Economics & Analytics should be asked to review the impact on capital formation for new entrepreneurial technical innovators of uncertainties of the present regulatory delays associated with new technologies at FCC.
- Perhaps the new independent FCC Inspector General should be asked to review the time line of the petitions leading to Docket 18-21 and whether it was reasonable.
- Much of the cause of delay of new technology is due to limited FCC resources and possibly outdated internal procedures for handling technical policy matters that may be inconsistent with today's FCC workflow. The attached conference paper, "Does Today's FCC Have Sufficient Decision Making Throughput to Handle the 21st Century Spectrum Policy Workload?" explores the issue of FCC productivity and possible reform that are independent of this rulemaking.

Sincerely,

/s/

Michael J. Marcus, Sc.D., F-IEEE  
Director

cc: Umair Javed