



May 22, 2019

Ex Parte

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

Re: *Unlicensed Use of the 6 GHz Band, ET Docket No. 18-295; Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Order and Notice of Proposed Rulemaking, GN Docket No. 18-122; Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band, ET Docket No. 13-49; Petition for Waiver to Allow Deployment of Intelligent Transportation System Cellular Vehicle to Everything (C-V2X) Technology, GN Docket No. 18-357*

Dear Ms. Dortch:

On May 21, 2019 Michael Calabrese, representing the Open Technology Institute at New America (OTI), spoke by telephone with William Davenport, Chief of Staff and Senior Legal Advisor to Commissioner Geoffrey Starks, with reference to the above-listed proceedings.

With respect to the **5.9 GHz band**, I inquired about the reason for delaying a Commission vote on what Chairman Pai indicated would be a Further Notice of Proposed Rulemaking that considers how to make all or a portion of the mostly vacant ITS band available for next generation Wi-Fi 6 and other unlicensed innovation. I noted that the Public Interest Organizations (PIOs), in comments opposing 5GAA's self-styled "Petition for Waiver," urged the Commission to take a fresh look at the best use of the entire 5.9 GHz band through a FNPRM that strongly considers relocating V2X safety applications to another band, such as the grossly underutilized 4.9 GHz public safety band. The relocation of CV2X safety applications and the authorization of contiguous, very wide-channel unlicensed access across the entire U-NII-3, U-NII-4 and U-NII-5 bands would be a win-win for consumers who will benefit immediately from fast and affordable Wi-Fi 6 connectivity and down the road from more secure auto safety communications.

With respect to the underutilized **mid-band spectrum at 3700-4200 MHz**, I reiterated the opposition of the Public Interest Spectrum Coalition (PISC) to any form of private sale or privately-run auction. It would be a violation of Section 309(j) if the Commission authorized any mechanism other than a FCC-administered public auction regardless of whether a private auction was conditioned on FCC-like protections and returning some share of revenue to the Treasury.

I further 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. The proposal could make mid-band spectrum available immediately to provide high-capacity and more affordable broadband connectivity in rural and small town America, which is why it enjoys broad support among rural broadband advocates, rural wireless ISPs, tier-two carriers with CAF obligations, Google, Microsoft and other technology companies represented by the Dynamic Spectrum Alliance.

With respect to the **6 GHz proceeding**, I summarized the main points in comments and reply comments that OTI filed on behalf of the PIOs. Consumer and rural broadband advocates strongly support the Commission's proposal to authorize unlicensed sharing across the entire 1,200 megahertz from 5925 to 7125 MHz. However, we also strongly believe significant improvements are critical to ensure that Wi-Fi and other unlicensed technologies can keep pace with consumer demand and make wireless connectivity robust and affordable for every home, business, school and library. Most importantly, the PIOs urged the Commission to authorize low power, indoor-only unlicensed use across the U-NII-5 and U-NII-7 band segments without the cost and complexity of AFC coordination. The failure to set a power level at which Wi-Fi can operate indoors across the entire 6 GHz band, using off-the-shelf routers and low-cost devices, would sacrifice what is likely to be the greatest benefit of this rulemaking.

Finally, I expressed OTI's strong opposition to mobile industry proposals to clear and auction the U-NII-6, U-NII-7 and/or U-NII-8 band segments for exclusive licensed use.¹ We agree with the high-technology industry coalition, fixed wireless providers, cable companies, rural broadband ISPs and other parties that strongly oppose the Commission moving forward with an FNPRM on the subject.² The proposal has already been rejected and requires no further consideration by the Commission.

The mobile industry proposal relies on the dubious assumption that federal incumbents will agree to vacate all or most of the 7 GHz band in order to accommodate what would be an extremely disruptive, costly and time-consuming relocation of tens of thousands of upper 6 GHz incumbent deployments into the 7 GHz band – concerns raised even by AT&T.³ In addition to being extraordinarily undeveloped and

¹ See, e.g., Reply Comments of Ericsson, ET Docket No. 18-295 (March 18, 2019); Reply Comments of CTIA, ET Docket No. 18-295, at 7-11 (March 18, 2019); Reply Comments of Verizon, ET Docket No. 18-295, at 5-11 (March 18, 2019); Reply Comments of T-Mobile USA Inc., ET Docket 18-295, at 7-9 (March 18, 2019); Comments of Ericsson, ET Docket No. 18-295 (Feb. 15, 2019).

² See, e.g., Reply Comments of Apple Inc., Broadcom Inc., Cisco Systems, Inc., Facebook, Inc., Google LLC, Hewlett Packard Enterprise, Intel Corporation, Marvell Semiconductor, Inc., Microsoft Corporation, Qualcomm Incorporated, Ruckus Networks, ET Docket No. 18-295 (March 18, 2019); Reply Comments of the Fixed Wireless Communications Coalition, ET Docket No. 18-295 (March 18, 2019); Reply Comments of Hewlett Packard Enterprises, ET Docket No. 18-295 (March 18, 2019); Reply Comments of Dynamic Spectrum Alliance, ET Docket No. 18-295 (March 18, 2019); Reply Comments of Wi-Fi Alliance, ET Docket No. 18-295 (March 18, 2019); Reply Comments of the Wireless Internet Service Providers Association (WISPA), ET Docket No. 18-295 (March 18, 2019); Reply Comments of NCTA—the Internet and Television Association, ET Docket No. 18-295 (March 18, 2019); Reply Comments of Charter Communications, ET Docket No. 18-295 (March 18, 2019); Reply Comments of Cisco, ET Docket No. 18-295 (March 18, 2019).

³ Reply Comments of AT&T Inc., ET Docket No. 18-295, at 23-25 (March 18, 2019) (endorsing the concept, but urging caution and concerns about the feasibility and need to relocate and replace the equipment for tens of thousands of incumbent point-to-point links currently operating in U-NII-7 band segment).

infeasible, the mobile industry proposal would undermine the emerging 5G wireless ecosystem by crippling Wi-Fi 6. This would make connectivity, particularly indoors for home and small business use, far less useful and more expensive than it would be under the Commission's pending proposal. The mobile industry would at best delay Commission action to expand use of available spectrum capacity in the 6 GHz band for as long as a decade. The first step alone – a study by NTIA and a consensus among federal incumbents to vacate or share the band – would take several years. This delay would sacrifice the near-term opportunity to achieve gigabit-fast Wi-Fi and global harmonization under the Commission's pending proposal.

Respectfully submitted,

/s/ *Michael Calabrese*

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