

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Petition for Rulemaking and Request for)
Emergency Stay of Operation of Dedicated)
Short-Range Communication Service in the)
5.850-5.925 GHz Band (5.9 GHz Band)) RM-11771

**REPLY COMMENTS OF PUBLIC KNOWLEDGE, OPEN TECHNOLOGY INSTITUTE
AT NEW AMERICA, ACCESS HUMBOLDT, PRIVACY RIGHTS CLEARINGHOUSE,
AND CONSUMER WATCHDOG**

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I. INTRODUCTION

Public Knowledge, Access Humboldt, Consumer Watchdog, Privacy Rights Clearinghouse, and Open Technology Institute at New America (collectively, “Commenters”) file these Reply Comments addressing objections and concerns raised by stakeholders and licensees in response to a Petition for Rulemaking filed by Public Knowledge and Open Technology Institute at New America (“Petition”) regarding the deployment of commercial services in the 5.9 GHz band.¹

In their responses to the Commission’s Public Notice seeking comment on the Petition, licensees and their supporters fail to offer any relevant objections to the Petition’s arguments. Opponents of the Petition fail to even address the question of commercialization, or the Petition’s core argument as to why the deployment of commercial applications in the 5.9 GHz band negatively impacts road safety, consumer privacy, and cybersecurity. By contrast, major auto safety groups and consumer organizations support the petition and express significant concerns about the issues it raises. Licensees and their supporters offer nothing more in response than the same tone-deaf talking points and avoiding the substantive issues at hand, while at the same time insisting that, even if consumer advocates are correct, the FCC is powerless to address the problems their actions create.

Based on opponents’ lack of substantive response, and the broad support from consumer advocates for the Petition’s arguments, the Commission should move forward with an interim rule prohibiting commercial operation, and commence a rulemaking to address the important

¹ See generally Public Knowledge and Open Technology Institute at New America, *Petition for Rulemaking and Emergency Stay of Operation of Dedicated Short-Range Communications Service in the 5.850-5.925 GHz Band (5.9 GHz Band)*, RM-11771 (Jun. 28, 2016) (“Petition”).

safety, cybersecurity, and privacy issues presented by the commercialization of the 5.9 GHz public safety band.

II. BECAUSE THIS IS A PETITION FOR RULEMAKING, NOT A PETITION FOR STAY OF AN ORDER THAT HAS NOT GONE INTO EFFECT, THE PROCEDURAL OBJECTIONS RAISED BY OPPONENTS ARE INAPPOSITE

At issue in this proceeding is a Petition for Rulemaking, coupled with a Request for Stay of Operation. The use of the word “stay” is in the routine “stop doing what you’re doing for a moment” sense. Merriam-Webster lists numerous clear, plain uses of “stay,” such as “to stop going forward” or “to stop doing something.”² As General Motors correctly notes, the 5.9 GHz Band was “licensed approximately 12 years ago” by the 2004 Order.³ Nowhere in the Petition is there any mention of the Request for Stay targeting a particular legal order; instead, opponents of the Petition such as General Motors are forced to infer one for themselves in order to support their irrelevant procedural objections, which are based wholly on a willful misreading of the Petition. Instead of addressing the substance of these issues, however, licensees and their advocates persist in advancing irrelevant procedural objections.⁴

What is at issue here is whether the Commission should impose an interim rule prohibiting the deployment of commercial services by DSRC licensees. The relevant standard there is a pure public interest standard, subject to review on arbitrary-and-capricious grounds. As demonstrated by the record, such a stay – technically an interim rule – is more than warranted.

The FCC has long had authority to impose interim rules where appropriate. Recently, for

² Merriam-Webster Dictionary, *Stay* (last accessed Sept. 8, 2016), *available at* http://www.merriam-webster.com/dictionary/stay?utm_campaign=sd&utm_medium=serp&utm_source=jsonld

³ Comments of General Motors at 4.

⁴ *See, e.g.* Comments of the Alliance of Automobile Manufacturers, Association of Global Automakers, and ITS America at 16-19 (“Auto Industry Comments”).

example, the FCC imposed interim prison phone rules to address the most pressing problems while it finalized a proceeding to address all the issues raised in that space.⁵ Here, too, the FCC could and should act pursuant to our petition, imposing an interim rule prohibiting the deployment of commercial services while the Commission completes a rulemaking to address the important issues raised by the Petition.

Furthermore, the FCC has ample authority under 47 USC § 303(g) and (r) to impose both cybersecurity privacy rules in furtherance of the public interest. It is of longstanding and incontrovertible precedent that the scope of the Commission’s authority under Section 303 is vast enough to contain both privacy and cybersecurity. This authority was recently reaffirmed by the FCC’s actions in the 5G Spectrum Frontiers proceeding. In establishing the importance of cybersecurity protections, the Commission explicitly rejected assertions that cybersecurity rules lie outside the scope of the Commission’s broad authority to take such actions as are necessary to promote the public interest.⁶

The Commission should, again, note the deliberate attempts by the auto industry to misconstrue our petition, describing it as a request for a stay of some legal order. It is not; the petition is, rather, a request that the FCC prohibit licensees from deploying commercial services, on an interim basis, until important questions about the commercialization of public safety spectrum, the cybersecurity and safety risks, and the impact on consumer privacy, can be

⁵ See generally *Rates for Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 12-375, FCC 13-113 (Aug. 9, 2013).

⁶ See generally *In the Matter of Use of Spectrum Bands above 24 GHz for Mobile Radio Services, Report and Order and Further Notice of Proposed Rulemaking*, GN Docket No. 14-177, FCC 16-89, ¶¶ 255-65 (rel. July 14, 2016) (“Spectrum Frontiers Order”).

adequately addressed. As this is an interim rule rather than a legal stay, the auto industry's detailed objections on legal bounds⁷ are wholly irrelevant.

III. CONSUMER PROTECTION ORGANIZATIONS UNANIMOUSLY SUPPORT THE PETITION, WHILE LICENSEES AND THEIR ALLIES FAIL TO EVEN ADDRESS CONSUMER CONCERNS, OR DISMISS THEM OUT OF HAND.

As the record reflects, the only parties who oppose the petition are licensees with substantial commercial interests in preserving their ability to exploit their spectrum windfall for economic gain, and agencies which generally support the deployment of DSRC as a public safety system. Only one commenter, CTIA, filed in opposition to the Petition and even bothered to address the issue of commercialization.⁸ No licensee or group advocating on their behalf addressed the question of commercialization in their comments.

The auto industry and its advocates trumpet the public safety benefits of NHTSA-governed DSRC, while systematically avoiding any discussion of the Petition's central point: commercialization. General Motors, which is leading the industry in rushing to deploy DSRC even in advance of finalized NHTSA standards, goes so far as to attempt to dismiss the Petition as representing Petitioners' "true intentions in requesting the Commission to stop the deployment of DSRC technology, despite its obvious public safety benefits."⁹ GM continues, concluding its comments with the following dismissal of any consumer concerns: "With so much at stake, and backed by a substantial industry-government-academia commitment to develop DSRC V2V

⁷ See, e.g. Comments of General Motors at 10-11.

⁸ CTIA filed a bizarre set of comments defending the auto industry's spectrum windfall in the 5.9 GHz band, while broadly promoting the commercialization of spectrum.⁸ While not relevant to this proceeding, Commenters urge the Commission to take note of CTIA's substantial shift in policy regarding spectrum windfalls. See Comments of CTIA at

⁹ General Motors Comments at 13.

technology, GM believes that the time has come to make these benefits available to the public.”¹⁰ The Commission should view with substantial skepticism, any insistence by a company pushing to deploy pre-standards technology that there are no problems, and that any that might arise are easily addressed by an entity with a direct commercial interest in rushing deployment.

Other opponents of the Petition, such as ITIF and ITI, do not address the specific privacy and cybersecurity concerns raised by the Petition, opting instead to simply take issue generally with the Commission’s authority to address these topics.¹¹ The auto industry joins in its attack on Commission authority, arguing that “issues related to privacy and security with respect to DSRC should be left primarily to NHTSA.”¹² The Commission, as discussed above, rejected these assertions regarding its authority to address cybersecurity in the course of its work on 5G Spectrum Frontiers earlier in 2016.¹³

By contrast, consumer and auto safety advocates are united in their support for the concerns raised by the petition. Supporters of the deployment of DSRC for safety purposes, such as Advocates for Highway and Auto Safety and the Center for Auto Safety submitted comments arguing that “the commercial use of this dedicated safety spectrum must be prohibited.”¹⁴ They continue, noting that commercial services in this band “threaten safety by increasing driver distractions”, “increase the risk of privacy violations and security compromises”, and “[could] be anti-competitive and counter to public ownership principles and the efficiency and flexibility of the spectrum.”¹⁵ Nineteen consumer groups, including Consumers Union, Consumer Action, the

¹⁰ *Id.* at 13-14.

¹¹ *See, e.g.* Comments of ITIF at 2-5; Comments of ITI at 3-4.

¹² Auto Industry Comments at 14.

¹³ *See generally* Spectrum Frontiers Order, ¶¶ 255-65.

¹⁴ Comments of Auto Safety Advocates at 2.

¹⁵ *Id.*

Center for Rural Strategies, Consumer Federation of America, Consumer Watchdog, the Electronic Frontier Foundation, EPIC, The Multicultural Media, Telecom and Internet Council, and Public Knowledge, submitted a letter noting that “only grant of the Petition can adequately protect the public.”¹⁶

Consumer and auto safety groups are united in their support of this Petition. Licensees and their allies are exceptionally insensitive to the concerns of consumers regarding privacy and cybersecurity, ignoring the substance of the issues raised in favor of wholly irrelevant procedural objections and reliance on NHTSA standards. This tone-deaf response is itself a clear demonstration of the reasons the auto industry, as licensees of this band, cannot be relied upon to appropriately address these concerns and protect consumers.

IV. LICENSEES HAVE FAILED TO ADDRESS WHY A RULE PROHIBITING COMMERCIAL APPLICATIONS USING DSRC-ALLOCATED SPECTRUM WOULD INJURE THEM, OR WHY PETITIONERS CONCERNS ABOUT THE PRIVACY AND CYBER SECURITY IMPLICATIONS OF OFFERING COMMERCIAL APPLICATIONS ON DSRC SPECTRUM ARE WRONG.

No licensee objected to, or even commented on, the Petition’s discussion of the issues raised by commercialization of the 5.9 GHz band.¹⁷ Exclusive commercial exploitation of the band runs contrary to sound spectrum policy and creates undesirable economic incentives for licensees to prioritize revenue-generating services over the core public safety mission. Without objection or comment from any affected licensee, it is entirely reasonable based on this record for the Commission to move forward, enacting an interim rule barring commercial applications in the 5.9 GHz band until a rulemaking on these issues is completed.

¹⁶ Comments of Consumer Advocacy Organizations at 1.

¹⁷ *See generally, e.g.* Comments of General Motors; Auto Industry Comments.

V. COMMENTERS APPARENTLY FAIL TO UNDERSTAND WHY CONNECTING VULNERABLE, INSECURE DEVICES TO SECURE COMMUNICATIONS NETWORKS RAISES CONCERNS – DESPITE REPEATED WARNINGS FROM FEDERAL AGENCIES ABOUT CONNECTING DEVICES TO CARS BECAUSE OF PRIVACY CONCERNS AND CYBER THREATS.

Some commenters¹⁸ go to great lengths to detail the specifics of the cybersecurity protections built into the NHTSA-governed V2V DSRC system as part of their continued strategy of insisting that any and all consumer protection issues are addressed by NHTSA’s technical standards. In their comments, however, the auto industry notes that the V2V radio can only exchange Basic Safety Messages, and drops all other types of communication without transmitting it.¹⁹ Only two possible conclusions can be drawn from this claim: either this statement is untrue and the radio being used for DSRC public safety functions (i.e. V2V) *can* transmit messages other than BSMs, or the auto industry intends to deploy a second radio for non-public safety purposes, such as congestion management or the deployment of commercial services. In the latter instance, that radio would operate wholly outside the structure of NHTSA’s DSRC standards, including the cybersecurity and privacy protections upon which the auto industry exclusively relies in dismissing the Petition.

Even if, as the auto industry asserts, the cybersecurity protections built into NHTSA’s DSRC standards are sufficient to secure the communications between DSRC units, it remains a basic axiom of network security that a network is only as secure as the other devices and networks to which it is connected. As established in the Petition, the basic automobile produced today contains more than a dozen clear attack vectors²⁰ and is vulnerable to remote cyberattacks. Cars are, in a word, vulnerable. Increasing automobile connectivity, adding commercial services

¹⁸ See Auto Industry Comments at 3-7.

¹⁹ See *Id.* at 9.

²⁰ *Id.*

using the 5.9 GHz band, and adding another trusted attack vector to the modern automobile all create a substantial cybersecurity threat, which the FCC has both the authority and the responsibility to address.

Commenters reiterate their position that the FCC need not prescribe specific cybersecurity practices - merely require, as it has done in the Tech Transitions and Spectrum Frontiers proceedings, that licensees demonstrate that they have considered cybersecurity issues, and have a high-level plan to address these issues and protect their networks and services on an ongoing basis. Rules like those proposed in our Comments, modeled on the Spectrum Frontiers cybersecurity rules, are a necessary step in the protection of 21st century networks from 21st century threats.

Lastly, auto industry commenters remain adamant not only that no privacy concerns exist, but that any legitimate concerns which might exist, would be adequately addressed by NHTSA's DSRC standards. As discussed in the previous section, however, the auto industry's reliance on NHTSA DSRC protections to discount the Petition conflicts with their assertion that the DSRC radio can only exchange BSMs. If commercial services in the band do not use the NHTSA DSRC radio, they must use some other radio, operating within the boundaries of the licensee's authorization to use the band but outside the consumer and safety protections built into NHTSA DSRC. In such a situation (which seems to be how the auto industry intends this system to work, based on their filings) commercial services would not enjoy any of the privacy or cybersecurity protections, which consumers expect and the FCC has authority and responsibility to apply.

VI. CONCLUSION

For the foregoing reasons, in addition to those outlined in the Petition and Comments, Commenters strongly urge the Commission to grant the Petition's requests in full. In this manner, the Commission can exercise sound judgment in spectrum and public safety policy, and protect the safety and security of drivers, passengers, and all consumers.

Respectfully Submitted,

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