



September 25, 2020

Ex Parte

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

Re: *Facilitating Shared Use in the 3.1-3.55 GHz Band, WT Docket No. 19-348*
Amendment of Part 90 of the Commission's Rules, WP Docket No. 07-100

Dear Ms. Dortch:

On September 23, 2020 Michael Calabrese, representing the Open Technology Institute at New America (OTI), spoke (by telephone) with C. Sean Spivey, wireless and international advisor to Chairman Ajit Pai, concerning the proceedings listed above.

Concerning the **3450-3550 MHz proceeding**, I began by reiterating OTI's view that extending the CBRS framework is likely the most expeditious and productive way to make this band available for 5G-capable networks and services.¹ I urged that the NPRM should at a minimum solicit comment on important elements of the CBRS framework that could enhance more intense, efficient and diverse use of 3450-3550 MHz. Regardless of the Commission's tentative proposals, the record should reflect a robust consideration of options including smaller licensing areas (e.g., counties), authorizing opportunistic use of spectrum in areas where licensees are not providing service, and harmonizing the technical rules with CBRS in general.

Most importantly, the NPRM should propose to leverage the Spectrum Access Systems (SAS) already operating in the adjacent CBRS band to coordinate General Authorized Access (GAA) to 3450-3550 MHz spectrum in areas where it is not in use. CBRS rules leverage the capabilities of the SAS to allow GAA use of vacant PAL spectrum in local areas until a priority access (PAL) licensee commences service. The Commission can promote higher-capacity service in rural and other underserved areas by authorizing GAA use of any locally-unused

¹ See Reply Comments of New America's Open Technology Institute, *Facilitating Shared Use in the 3.1-3.55 GHz Band*, WT Docket No. 19-348 (March 23, 2020).

spectrum in 3450-3550 MHz until the licensee commences service, at which point (and within 24 hours) the SAS authorization for GAA use would be discontinued. If there is a concern about stranded users, the rules could require that GAA equipment conform to CBRS technical rules, so that any opportunistic user always has access to the CBRS band (and at least 80 megahertz of GAA spectrum) as an alternative.

As OTI explained at length in comments responding to the Commission's proceeding on secondary markets last year, a use-it-or-share-it rule expands productive use of spectrum without risk of harmful interference and without undermining the deployment plans of primary licensees.² Under SAS control, GAA use of vacant 3450-3550 MHz spectrum would promote more widespread deployment of high-capacity broadband in rural and other underserved areas.

As in CBRS, where SAS capabilities are expected to spur secondary market leasing, a use-or-share authorization enhances the incentives for leasing unused spectrum licensed for exclusive use. The SAS itself, as in CBRS, can facilitate secondary market transactions. The costs to opportunistic users in 3450-3550 MHz would be marginal because the SAS infrastructure is already in operation. As in CBRS, the SAS ensures that unused spectrum can be put to use in rural and other underserved areas without any risk of interference or any impact whatsoever on the primary licensee that has not yet built out. The only burden on post-auction licensees is, as in CBRS, to use an online portal to notify the SAS when they are ready to commence service in a local area.

The NPRM should address this opportunity and seek comment on the advantages of leveraging SAS infrastructure to authorize opportunistic access to unused spectrum in this band on a licensed-by-rule basis (e.g., General Authorized Access). OTI urges the Commission to add more explicit questions concerning this use-it-or-share-it opportunity, as well as other elements of the CBRS framework. More specifically, we propose the following line edits:

71. We seek comment on appropriate technical rules to maximize the potential uses of the 3.45-3.55 GHz band, . . . We also seek comment on alternative approaches. For example, should the technical rules for this band more closely resemble those for the Citizens Broadband Radio Service in the 3.5 GHz band? **Are there advantages to adopting technical rules that are harmonized with the Priority Access Licenses in the adjacent 3.5 GHz CBRS band?**

91. We seek comment generally on the appropriate approach or combination of approaches to encourage investment, promote efficient spectrum use, and facilitate robust deployment in the band. In general, we propose to align the licensing and operating rules . . . with the rules adopted in the 3.7-4.2 GHz band, but also seek comment on alternative or different approaches, **including aspects of the Part 96 rules, such as the use-or-share rules in 96.25(c), as well as smaller license areas and shorter license terms.**

² Comments of OTI and Public Knowledge, *Partitioning, Disaggregation and Leasing of Spectrum*, WT Docket 19-38 (June 3, 2019).

95. Geographic License Area.— Considering the opportunity presented here to align the 3.453.55 GHz band with other mid-band spectrum, . . . We invite commenters to discuss which set of considerations is most applicable for the circumstances of the 3.45-3.55 GHz band. Or do the considerations in this band indicate a different geographic license area is more appropriate? **As we have for the adjacent CBRS band, should we allow “license-by-rule” use for some spectrum in the band? Should we permit opportunistic use when and where licensees and federal users are not using the spectrum? For areas where not all spectrum licenses are sold at auction, should we permit opportunistic use of that spectrum?** We ask commenters to address the costs and benefits of their recommended licensing approach.

With respect to the **4.9 GHz Order and FNPRM**, I expressed OTI’s disappointment that the draft does not consider or even address proposals by OTI and the Dynamic Spectrum Alliance to relocate at least cellular vehicle safety signaling (C-V2X) from the unused 5.9 GHz band to the 4.9 GHz band, thereby achieving a win-win for consumers and the U.S. economy.³

To the extent the Commission chooses to open the band for more diverse non-public safety uses, OTI generally supports the draft Order provided that decisions about use of the band in each state is ultimately controlled by its governor and not by public safety associations or agencies (except to the extent that is what the governor or state legislature decides). Finally, I expressed the view that the FNPRM should emphasize the benefits of a mechanism to facilitate diverse and dynamic spectrum sharing while also protecting incumbent public safety uses that remain in operation. In that regard, OTI concurs with comments filed in response to the *Sixth FNPRM* by Federated Wireless, explaining that a privately developed and operated dynamic spectrum sharing database could simplify management of the band and promote more diverse, intensive and efficient use.⁴

Respectfully submitted,

/s/ Michael Calabrese
Director, Wireless Future Program
New America’s Open Technology Institute
740 15th Street, NW Suite 900
Washington, DC 20005

³ See Michael Calabrese and Amir Nasr, *The 5.9 GHz Band: Removing the Roadblock to Gigabit Wi-Fi*, Open Technology Institute at New America, Policy Report (July 2020); *Ex Parte* Letter from Martha Suarez, Dynamic Spectrum Alliance, *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100 (June 10, 2020); Comments of Open Technology Institute at New America and Public Knowledge, *In the Matter of Use of the 5.850-5.925 GHz Band*, ET Docket No. 19-138 (March 9, 2020).

⁴ See Comments of Federated Wireless, *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, FCC 18-33, at 3 (July 6, 2018). See also Reply Comments of Wireless Internet Service Providers Assn., *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100 (filed August 6, 2018), at 4.