



April 8, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Notice of Oral *Ex Parte* Presentation

Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354

Dear Ms. Dortch:

On April 6, 2015, Michael Calabrese of New America's Open Technology Institute (OTI) spoke with Priscilla Delgado Argeris, senior legal advisor to Commissioner Jessica Rosenworcel, by phone concerning the above-referenced proceeding.

The OTI representative expressed strong support for the Commission's proposal to create a Citizens' Broadband Radio Service (CBRS) at 3.5 GHz. OTI believes the Commission has done an admirable job in striking a reasonable balance between competing interests, implementing in a practical manner the three-tier dynamic spectrum sharing framework outlined by the President's Council of Advisors on Science and Technology (PCAST) less than three years ago. Calabrese reiterated the longstanding support of OTI and of the Public Interest Spectrum Coalition (PISC) for an Order ensuring that a majority of the 3550-3700 MHz band is reserved for General Authorized Access (GAA) and that also permits opportunistic access to Priority Access License spectrum until such time as the licensee reports to the Spectrum Access System that it is commencing actual service.

Calabrese went on to highlight OTI's two remaining concerns. First, OTI is concerned that a combination of provisions could combine to create uncertainty about whether there will always be a sufficient amount of GAA spectrum available in every market and at all times. If the Priority Access Licenses (PALs) can always displace GAA whenever channels must be pulled from use to protect Navy or other federal incumbents, there is a risk that there could be little or no GAA access under certain scenarios. Even if this is not a regular occurrence, the risk and uncertainty could stall or undermine the development of a mass market for GAA chips, devices and services.

OTI suggested two possible remedies. One would be a 50 megahertz “floor” for GAA, so that no more than 30 megahertz could be displaced. For example, if the Commission decides to assign PALs only below 3650 MHz, then the 3650-3700 MHz band could be reserved for GAA at all times. A second option would be to change the initial apportionment of GAA and PAL spectrum to 90 and 60, respectively, rather than 80 and 70, so that the chances of GAA foreclosure would be lower. OTI believes the FCC should err on the side of more GAA spectrum. Because the Spectrum Access System dynamically determines the spectrum available in each area, the Commission could easily increase the ratio of PAL spectrum in the future, whereas it would be extremely difficult to reallocate already-licensed PALs for GAA use.

Second, Calabrese reiterated OTI’s concern about reports that companies, including Qualcomm and Verizon, are testing pre-certification versions of LTE-U technology that could be used by licensed services to dominate GAA in an anti-competitive manner. Since the CBRS will be licensed by rule, OTI suggested there is a strong need for preemptive “rules of the road” concerning the shared nature of the GAA bands in order to avoid another Section 333 Wi-Fi blocking controversy down the road. He noted that OTI and Public Knowledge have raised particular concerns with regard to Qualcomm’s reported effort to ensure that the control channel for LTE use of unlicensed spectrum – including, potentially, the General Authorized Access portion of the 3.5 GHz band – is anchored in a licensed frequency and gives carriers an advantage over unlicensed users.¹

Calabrese stated that merely requiring equipment to have the “capability” of operating in a two-way mode on the band does not go far enough. He suggested that the Commission consider requiring that at least on the open and shared GAA portions of the band, operators and devices should be required to operate across the 3.5 GHz band on a standalone basis and ***without being dependent on a control channel anchored in licensed spectrum outside the band***. Otherwise, the Commission would be making the purchase of an expensive cellular license the price of favored use of what should be the public and fairly-shared GAA portion of the band. If mobile carriers want to control spectrum and aggregate it into licensed networks, they should go to auction and use licensed bands. Requiring that GAA spectrum is shared fairly and not controlled from outside the band could be a technologically neutral requirement, leaving industry and individual companies the ability to decide exactly how to implement coexistence.

Respectfully submitted,

/s/ *Michael Calabrese*
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cc: Priscilla Delgado Algeris
Travis Litman

¹ See, e.g., *Ex Parte* Letter of Michael Calabrese and Harold Feld to Marlene H. Dortch, Federal Communications Commission, GN Docket No. 12-354 (March 16, 2015).