



November 12, 2015

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

Re: Notice of Oral *Ex Parte* Presentation

OET and Wireless Telecommunications Bureau Seek Information on Current Trends in LTE-U and LAA Technology, ET Docket No. 15-105
Amendment of Parts 15, 73 and 74 of the Commission's Rules to Provide for the Preservation of One Vacant Channel in the UHF Television Band for Use by White Space Devices and Wireless Microphones, MB Docket No. 15-146
Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions, GN Docket No. 12-268

Dear Ms. Dortch:

Michael Calabrese of New America's Open Technology Institute (OTI) met with Johanna Thomas, wireless counsel to Commissioner Jessica Rosenworcel, on November 9, 2015, and on November 10 with Edward Smith, wireless counsel to Chairman Tom Wheeler, concerning the above-referenced proceedings.

OTI's representative began each meeting by expressing gratitude for the Commission's recent Notice of Apparent Liability for Forfeiture (NALF) in the matter of M.C. Dean, Inc. OTI strongly concurs with the Commission's clarification in the NALF that Section 333 prohibits the intentional blocking, disruption or degradation of personal Wi-Fi hotspots. Calabrese noted that a robust and context-dependent application of Section 333 is an important backstop against the potentially disruptive and anti-competitive introduction of license-anchored LTE technologies into the unlicensed bands, as has been proposed by companies participating in the LTE-U Forum.

Calabrese summarized the concerns that OTI and other consumer advocacy groups raised in joint comments filed last June in response to the Commission's Public Notice in Docket No. 15-105.¹ The OTI representative highlighted concerns that mobile carriers have both the ability and strong

¹ See Reply Comments of OTI, Public Knowledge, Free Press and Common Cause, *OET and Wireless Telecommunications Bureau Seek Information on Current Trends in LTE-U and LAA Technology*, ET Docket No. 15-105 (June 26, 2015).

incentives to use LTE-U to engage in anti-competitive behavior harmful to consumers, while for the first time being able to charge consumers for the use of unlicensed spectrum. Carriers have powerful incentives to use LTE-U to deter mobile market entry by “Wi-Fi First” providers, such as wireline ISPs. LTE-U is designed to give individual carriers the option to adjust their access points to impose just enough latency on neighboring Wi-Fi users to frustrate consumer use of real-time applications, such as video calling, live music streaming and VoIP. Moreover, mobile carriers deploying LTE-U and LAA operators will entirely avoid the ill-effects of any resulting poor coexistence on unlicensed bands, since they can shift their users and traffic at will to their exclusive, licensed spectrum.

OTI also noted that several studies filed by parties (including Google, Broadcom and NCTA) suggest that whether or not the ongoing 3GPP process ultimately leads to a globally-standardized version of LTE on unlicensed (Licensed Assisted Access, or LAA) that can share fairly with Wi-Fi and other unlicensed technologies, the non-standard version of LTE-U that U.S. carriers plan to deploy next year coexists poorly with Wi-Fi. Accordingly, the OTI representative urges the Commission not to move forward with the certification of any LTE-U equipment until transparent and collaborative testing among the parties can establish that the technology will not unduly disrupt the Wi-Fi ecosystem so critical to making today’s mobile broadband data use both available and affordable for most consumers, as well as for schools and other institutions.

With respect to the vacant channel NPRM, the OTI representative expressed appreciation and continuing support for the efforts of Commissioner Rosenworcel, the Chairman and the auction team for the pending proposal to designate a “second vacant channel” in the remaining TV band for unlicensed use after the repack in those markets where it becomes necessary to place a TV station in the Duplex Gap. OTI emphasized that the availability of at least three unlicensed channels in every market nationwide is the minimum needed to spur and sustain such innovations. Leading chip makers have stated repeatedly that access to a minimum of three unlicensed channels in every market is necessary to justify the investment needed to integrate the IEEE 802.11af standard for TVWS into Wi-Fi chips for smartphones, tablets and other mobile devices. Consumers will greatly benefit from the greater penetration and range of this added connectivity – a public interest benefit that would be sacrificed nationwide if a second vacant channel is not reserved in those very few markets where a TV station occupies the duplex gap rather than a channel slot in the ongoing TV band.

Respectfully submitted,

/s/

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cc: Edward “Smitty” Smith
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