

December 2, 2015

Ms. Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St, NW  
Washington, DC 20554

**Re: ET Docket No. 15-105, Public Notice OET and WTB Seek Information on Current Trends in LTE-U and LAA Technology**

Dear Ms. Dortch:

MediaFreedom believes the recent proposal by Public Knowledge<sup>1</sup> – in which, among other things, it urges the Commission to extend the Communications Act's §333 to Part 15 devices, modeled after the Commission's Progeny Order<sup>2</sup> (“Progeny”) – is nothing more than a ploy designed to limit the competitive roll-out of LTE-U products made under the guise of protecting the Wi-Fi / unlicensed commons. It goes further, however. Not only does it seek to enlist the support of the Commission to help its corporate supporters compete in the marketplace (something they can clearly do on their own), it recklessly invites the agency's novel and potentially deleterious participation in the Part 15 device development process – a process that has thrived precisely because the Commission has not been actively involved in it. Accordingly, Public Knowledge's proposal fails to promote the public interest and should be rejected by the Commission.

Applying Progeny's §333 testing / “indicia of trust” framework as demanded by Public Knowledge would essentially mandate newfound compatibility and coexistence requirements for Part 15 devices, granting interference protection that well exceeds their Part 15 status. In this regard, it would effectively give unlicensed users a veto over other competing technologies, enabling the arbitrage of arbitrary, Commission-determined “unacceptable levels of interference” to block product certification.

The FCC has never required interference-less operation between Part 15 devices, noting over and over again that persons operating unlicensed devices must accept interference from all other sources; that interference caused by one Part 15 device to another does not constitute “harmful interference”; that intentional disruption by one Part 15 device to another carries no legal liability; and that those operating in unlicensed spectrum should understand the clear limitations of the model and thus must adapt their technology to work within it.

As a consequence of the FCC's “non-requirements,” the unlicensed space has flowered; industry, working organically, has developed some of the most innovative and useful communications tools known to man. The Internet ecosystem has blossomed as a result.

Undeterred by this tremendous success story, however, Public Knowledge seeks a dubious and conflicted extension of §333 ostensibly to protect Part 15 devices. More immediately, it wants the Commission to graft a vague, labyrinthine “I-know-it-when-I-see-it” testing protocol on LTE-U's device certification process – one in which the developers of LTE-U must somehow demonstrate “sufficient indicia” that undefined “unacceptable interference” does not emanate from their devices. More broadly, this process would not just be limited to solely LTE-U, too. Public Knowledge's

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1  See Letter of Harold Feld, Senior Vice President, Public Knowledge, to Marlene H. Dortch, Secretary, Federal Communications Commission, filed in IB Docket No. 13-213, ET Docket No. 15-105 (November 19, 2015).

2  Request by Progeny LMS, LLC, for Waiver of Certain Multilateration Location and Monitoring Service Rules, Progeny LMS, LCC Demonstration of Compliance with Section 90.353(d) of the Commission's Rules (June 6, 2013).

entreaty would also bring about the direct and unprecedented engagement of the FCC in the natural evolutionary / non-regulatory Part 15 process, ensnaring all “future developers of Part 15 devices” so that other stakeholders are not “needlessly antagonized” (whatever that means) by innovation occurring elsewhere in the ecosystem. In doing so, it would fundamentally alter Part 15's organic nature to the detriment of pro-consumer, permission-less innovation in the unlicensed space.

What makes Public Knowledge's proposal all the harder to swallow is the counterintuitive assumption it is built upon – that is, that the developers of LTE-U have designed a product to go into the stream of commerce that purposely and maliciously undermines the Wi-Fi / unlicensed commons. Public Knowledge (and others who want to thwart LTE-U's competitive roll-out) would have the Commission believe that the Wi-Fi / unlicensed ecosystem has somehow been created *only* by Public Knowledge's corporate funders, wholly unconnected to the developers of LTE-U. Yet the very same benefits it and others trot out to prove their point<sup>3</sup> were in fact brought about by the active partnership, leadership and investment of LTE-U's developers, too. Consequently, those working to introduce LTE-U to hungry consumers have an immense stake in seeing that the entire Wi-Fi / unlicensed commons works to its fullest ability. To posit that they would develop LTE-U to, in effect, soil their own nest, strains belief.

Yes, device development in the unlicensed space is an organic, non-linear and essentially unregulated process. At times, it is even untidy. Thankfully. But, it is one that has yielded so much benefit for society and consumers that it should not be “fixed” by the Commission. The ecosystem must continue to be allowed to work out its differences outside the aegis of crippling FCC rules or regulations.

Section 333 cannot presently be reconciled with Part 15 permission-less innovation. Accordingly, the Commission should reject Public Knowledge's cynical and parochial requests. They are designed to limit competition, not foster it, and thus stand against consumers and the public interest.

Sincerely,

Mike Wendy  
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Alexandria, VA 22309

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<sup>3</sup> □ See Letter of Edgar Figueroa, President and CEO, Wi-Fi Alliance, to Marlene Dortch, Secretary, Federal Communications Commission, Filed in ET Docket No. 15-105 (November 20, 2015).