February 19, 2016

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

Re: Notice of Oral *Ex Parte* Presentation
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
Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band, ET Docket No. 13-49
OET and Wireless Telecommunications Bureau Seek Information on Current Trends in LTE-U and LAA Technology, ET Docket No. 15-105

Dear Ms. Dortch:

On February 16, 2016 Michael Calabrese of New America's Open Technology Institute (OTI), met with Holly Sauer, media policy counsel to Commissioner Mignon Clyburn, concerning the above-referenced proceedings.

With respect to the Vacant Channel proceeding, the OTI representative reiterated the continued strong support by the Public Interest Spectrum Coalition (PISC) for the Commission's proposal to reserve at least one vacant television channel in every market nationwide for public use on an unlicensed basis, as well as a second channel in any market where a TV station is repacked into or otherwise impairs the Duplex Gap. The OTI representative emphasized that unlicensed access to at least three 6-megahertz unlicensed channels in *every market* nationwide is the minimum needed to spur and sustain investment and innovation. With certainty that sufficient low-band spectrum will be available for unlicensed use nationwide, leading chip makers have promised investments to integrate the IEEE 802.11af standard for TVWS into Wi-

Fi chips for smartphones, tablets and other mobile devices that would benefit from the greater penetration and range of such spectrum. Since the Duplex Gap represented one of these three channels, it remains critical that the Commission guarantee a substitute channel of 6 megahertz in any market where a TV station is relocated into the Duplex Gap.

With respect to the Commission's ongoing proceeding to make next generation Wi-Fi possible by authorizing unlicensed use of all or a portion of the U-NII-4 band with the auto industry, the OTI representative summarized a number of the key points in a report he authored and released last month: *Spectrum Silos to Gigabit Wi-Fi – Sharing the 5.9 GHz 'Car Band.'* A copy of the report is attached. The report explains that even if NHTSA adopts a vehicle-to-vehicle DSRC safety mandate, most of the ITS band would not be used for real-time crash avoidance or public safety purposes. This distinction between real-time V2V safety signaling (which will be required to operate on a single, dedicated 10 megahertz Basic Safety Messaging channel) and non-safety DSRC applications (which will occupy most of the ITS band) is critical to a policy outcome that best serves consumers and the economy.

OTI stated that the FCC and the Obama Administration should expedite a collaborative testing process aimed at a win-win compromise that permits the two services – DSRC and U-NII devices – to coexist and share at least the lower portion of the 5.9 GHz band without causing harmful interference to V2V crash avoidance and real-time safety-of-life communications. The OTI representative also recommended that the public notice, or FNPRM, that will refresh the record in the 5 GHz proceeding should be released on an expedited basis and should ask all the questions needed so that the Commission can go directly to an Order. Specifically, the notice should ask specific questions about the distinction between DSRC safety- and non-safety applications, the feasibility of segmenting the band, and whether the Qualcomm, Cisco or some entirely new or different approach will work best to ensure consumers benefit from both real-time safety signaling and next generation gigabit Wi-Fi.

Finally, concerning LTE-U, the OTI representative 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] Mobile carriers have both the ability and strong 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.

[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).

Although OTI regards the recent STA granted to Qualcomm for testing LTE-U technology to be routine and unobjectionable, Calabrese stated that it must not be conflated with the Coexistence Testing Plan still under development by the companies participating in the Wi-Fi Alliance process. More critically, he emphasized that even if the LTE-U Forum and other Wi-Fi Alliance member companies reach a consensus on a Coexistence Testing Plan, the primary stakeholders in the Wi-Fi ecosystem – which includes more than 100 million consumers, schools, libraries, start-ups, app developers and others who are increasingly reliant on Wi-Fi for affordable and fast broadband connectivity – will need to rely on the Commission to conduct its own independent analysis, and additional testing if necessary, to ensure that LTE-U will not unduly disrupt Wi-Fi and cause an avoidable 'tragedy of the spectrum commons.'

Respectfully submitted,

/s/
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cc: Holly Sauer