

June 13, 2016

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

Re: *Terrestrial Use of the 2473-2495 MHz Band for Low Power Mobile
Broadband Networks – IB Docket No. 13-213 – WRITTEN EX PARTE
PRESENTATION*

Dear Ms. Dortch:

We are writing on behalf of the Wireless Communications Association International (“WCA”) to address recent ex parte filings by Public Knowledge and the Open Technology Institute (“PK/OTI”) and by the Wireless Internet Service Providers Association (“WISPA”) proposing that the Commission allow unlicensed use of the 2483.5-2495 MHz band as a *quid pro quo* for authorizing Globalstar, the existing Mobile Satellite Service licensee in the band, to provide its proposed Terrestrial Low Power Service (“TLPS”).¹

WCA’s concerns regarding the potential interference to Educational Broadband Service (“EBS”) and Broadband Radio Service (“BRS”) operations that could result from Globalstar’s deployment of TLPS in the spectrum immediately adjacent to the BRS/EBS are a matter of record and need not be repeated here.² And, of course, WCA has not been alone in expressing concerns regarding potential adverse consequences from TLPS. The Bluetooth community has established that Bluetooth will suffer a degradation in performance if TLPS becomes as widespread as Globalstar suggests,³ while the Wi-Fi community has expressed concerns

¹ See Letter from Harold Feld, Senior Vice President, PK & Michael Calabrese, Wireless Future Project, OTI, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 13-49 & IB Docket No. 13-213 (filed June 6, 2016); Letter from Michael Calabrese, Wireless Future Project, OTI & Harold Feld, Senior Vice President, PK, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 13-49 & IB Docket No. 13-213 (filed June 6, 2016); Letter from Stephen E. Coran, Counsel for WISPA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 (filed June 10, 2016) (“WISPA June 10 Ex Parte Letter”).

² See Letter from Mary N. O’Connor, Counsel to WCA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 (filed June 6, 2016); Letter from Mary N. O’Connor, Counsel to WCA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 (filed May 31, 2016); Letter from Mary N. O’Connor, Counsel to WCA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 (filed May 19, 2016).

³ See Letter from Laura A. Stefani, Counsel for The Hearing Industry Ass’n, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 & RM-11685 (filed June 7, 2016); Letter from Michael Warnecke,

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regarding the potential that Globlastar's operations on Wi-Fi Channel 14 will cause interference to the unlicensed use of the rest of the 2.4 GHz band.⁴

In the apparent belief that two wrongs make a right, PK/OTI and WISPA now urge that if the Commission is disposed to allow Globalstar to utilize Channel 14, it should allow everyone to do the same. In so doing, they make no effort whatsoever to address the record evidence of potential interference to Bluetooth, Wi-Fi use of Channel 11 and BRS/EBS licensed operations from operations on Channel 14.⁵ But that failure is not surprising, as allowing increased use of Channel 14 will do nothing but double down on the interference risk. Their position, in effect, is that if Globalstar can cause interference, Wi-Fi users should be allowed to, too.

Leaving aside the merits (or, more precisely, the lack thereof) to this proposal, as a threshold matter there is nothing in the Notice of Proposed Rulemaking ("*NPRM*") in this

Chief Counsel, Technology Policy, Entertainment Software Ass'n, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 & RM-11685 (filed June 6, 2016); Letter from Mark Powell, Executive Director, Bluetooth SIG, Inc. to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 (filed June 2, 2016). The Congressional Hearing Caucus has expressed grave concerns regarding the potential adverse consequences of TLPS on Bluetooth-reliant hearing aids. *See* Letter from David B. McKinley, P.E. & Mike Thompson, Congressional Hearing Caucus Co-Chairs, Congress of the United States, to Tom Wheeler, Chairman, FCC, IB Docket No. 13-213 (filed Apr. 8, 2016).

⁴ *See, e.g.*, Letter from Paula Boyd, Director, Government Relations and Regulatory Affairs, Microsoft Corp., to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 & RM-11685 (filed June 7, 2016); Letter from Edgar Figueroa, President and CEO, Wi-Fi Alliance, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 & RM-11685 (filed June 3, 2016); Letter from Paul Margie, Counsel to NCTA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 & RM-11685, at 1 (filed Apr. 27, 2015); Letter from Edgar Figueroa, President and CEO, Wi-Fi Alliance, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 & RM-11685, at 2 (filed May 26, 2015). Indeed, PK/OTI and WISPA have previously expressed concerns that activation of Channel 14 will cause interference to unlicensed Wi-Fi operations on Channel 14. Letter from Michael Calabrese, Director, Wireless Future Project, OTI & Harold Feld, Senior Vice President, PK, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213 & GN Docket No. 12-354, at 1-2 (filed Feb. 18, 2015) ("[T]he FCC should not authorize a new licensed service that overlaps the intensively-used 2.4 GHz unlicensed band without the benefit of objective and conclusive testing of whether TLPS will potentially disrupt existing Wi-Fi operations on Channel 11"); Letter from Stephen E. Coran, Counsel for WISPA, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 13-213, at 1 (filed Dec. 10, 2015) ("Globalstar has failed to demonstrate that TLPS operations will not cause harmful adjacent-channel interference to millions of broadband, utility and consumer devices using Wi-Fi Channel 11, including WISP networks that provide broadband service to consumers.").

⁵ Surprisingly, WISPA even acknowledges that its proposal would maintain the potential for interference to Channel 11 if it is not being used by the same user as Channel 14. WISPA June 10 Ex Parte Letter at 2.

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proceeding to suggest that the Commission might not only allow Globalstar, the sole licensee of the MSS spectrum at issue here, to provide a terrestrial service, but also would allow everyone to operate on spectrum adjacent to the licensed BRS. Thus, any decision allowing use of the 2483.5-2495 MHz band by anyone other than Globalstar would have to be vacated on the grounds that the result was neither proposed nor a logical outgrowth of anything that was proposed in the *NPRM*. See Administrative Procedure Act (“APA”), 5 U.S.C. § 553(c); *Envtl. Integrity Project v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005). The Commission had an obligation to describe in the *NPRM* the “range of alternatives being considered with reasonable specificity.” *Horsehead Res. Dev. Co. v. Browner*, 16 F.3d 1246, 1268 (D.C. Cir. 1994). The FCC’s failure to even suggest that it might allow parties other than Globalstar to utilize the spectrum adjacent to the licensed BRS, much less invite comment on such a possibility, is dispositive. See, e.g., *Ass’n of Private Sector Colls. & Univs. v. Duncan*, 681 F.3d 427, 461 (D.C. Cir. 2012). That failure alone would render a decision allowing general unlicensed use of Channel 14 a blatant violation of the APA, which forbids “agencies to use the rulemaking process to pull a surprise switcheroo on regulated entities.” *Envtl. Integrity Project*, 425 F.3d at 996.⁶

The fundamental unfairness of moving forward with allowing unrestricted access to Channel 14 without Commission advance notice is compounded by the fact that those advocating for unlicensed access to the spectrum at issue have presented a proposal that is, at best, half-baked. Fundamental details of how such access would work, and how it would be controlled to assure that licensed BRS/EBS operations actually receive the protection against interference to which they are entitled, remain unaddressed by the proponents. For example:

- Are the proponents of unlicensed use of Channel 14 suggesting that the Globalstar Network Operations System (“NOS”) or some sort of spectrum access system would be used not only to avoid unlicensed interference to Globalstar, but also to others? They never say they are, but if that is their intent, they have failed to propose a funding mechanism for that system. Does the unlicensed community intend to share the costs of such a system with Globalstar? And what happens if, as is certainly possible, TLPS fails and Globalstar ceases to operate its NOS? Are PKI/OTI and WISPA prepared to commit to the long-term funding of that system (and, if so, do they have the long-term financial resources to undertake such a commitment)? Certainly licensed BRS licensees, having acquired their spectrum at auction to assure protection against interference, should not now be required to fund a system that would allow their unlicensed competitors additional free spectrum.

⁶ The fact that WCA (with a membership that includes many, but not all, BRS Channel 1 licensees) is making this ex parte filing is of no moment because the agency “must itself provide notice of [its] proposal.” *Duncan*, 681 F.3d at 462; see also *Small Refiner Lead Phase-Down Task Force v. United States EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983) (agency “cannot bootstrap notice from a comment”).

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- How will the NOS actually work to protect licensed BRS/EBS operations from interference caused by unlicensed use of Channel 14? What will be the recourse of the licensee when such interference does occur? BRS/EBS licensees should not be required to suffer interference from Globalstar or unlicensed users while they point fingers at each other. At a minimum, while BRS/EBS licensees must not report interference without a reasonable basis for believing it is coming from Channel 14, once a complaint of interference is lodged by a licensee, the NOS must be required to stop Channel 14 use by all TLPS and unlicensed devices in the vicinity of the reported interference, and no device should be permitted to resume use of Channel 14 until its owner can establish that it is not the culprit.
- What security requirements will be imposed to assure that only access points controlled by the NOS are allowed to use Channel 14? The Commission cannot ignore the long history of unlicensed wireless internet service providers illegally modifying equipment to avoid Commission rules they find inconvenient.⁷ If the Commission expects BRS/EBS licensees to take comfort in a NOS, it must make sure that only those devices controlled by the NOS can use the 2483.5-2495 MHz band.

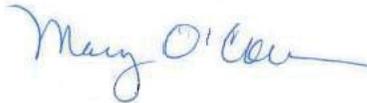
These are just a few of the myriad issues raised by the proposal to allow opportunistic unlicensed use of the 2483.5-2495 MHz band. Yet, none of these have been addressed in the proposals advanced by PK/OTI and WISPA. Before the Commission can seriously entertain the possibility of unlicensed use in the 2483.5-2495 MHz band, it must afford the public notice and an opportunity to comment.

⁷ See Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band, *Notice of Proposed Rulemaking*, 28 FCC Rcd 1769, 1782-83 ¶ 43, 1784-85 ¶ 49 (2013). See also Directlink, LLC, *Forfeiture Order*, 29 FCC Rcd 1809 (EB 2014); Rapidwave, LLC, *Forfeiture Order*, 29 FCC Rcd 1109 (EB 2014); Skybeam Acquisition Corp., *Forfeiture Order*, 29 FCC Rcd 1194 (EB 2014); Ayustar Corp., *Order and Consent Decree*, 28 FCC Rcd 15420 (EB 2013); Argos Net, Inc., *Notice of Apparent Liability for Forfeiture and Order*, 27 FCC Rcd 2786 (EB 2012); Utah Broadband, *Notice of Apparent Liability for Forfeiture and Order*, 26 FCC Rcd 1419 (EB 2011); Sling Broadband, LLC, *Forfeiture Order*, 26 FCC Rcd 13062 (EB 2011); Letter from Reuben Jusino, Resident Agent, FCC, San Juan Office, to Crucito Marrero, dba CMARR, *Notice of Unlicensed Operation*, Case No: EB-11-SJ-0013, Document No: W201132680001 (June 2, 2011); Letter from Reuben Jusino, Resident Agent, FCC, San Juan Office, to The WIFI Store, *Notice of Unlicensed Operation and Notification of Harmful Interference*, Case No: EB-FIELDSCR-12-00001097, Document No: W2012326832680001 (Mar. 13, 2012); Letter from Reuben Jusino, Resident Agent, FCC, San Juan Office, to David Robles dba dmwireless, *Notice of Unlicensed Operation and Notification of Harmful Interference*, Case No: EB-FIELDSCR-12-00001096, Document No: W2012326832680002 (Mar. 13, 2012).

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Pursuant to Sections 1.1206(b)(2) and 1.49(f) of the Commission's Rules, this letter is being filed electronically with the Commission via the Electronic Comment Filing System. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

A handwritten signature in blue ink that reads "Mary O'Connor". The signature is written in a cursive style with a long horizontal line extending to the right.

Paul J. Sinderbrand

Mary N. O'Connor

Counsel to the Wireless Communications
Association International

cc: Edward "Smitty" Smith
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