

March 9, 2012

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

Re: Docket No. RM-11592
ET Docket No. 10-42
WT Docket No. 04-356

Dear Ms. Dortch:

On March 7, 2012, I met with Amy Levin, Advisor to Chairman Genachowski, with regard to the above captioned proceedings.

Interoperability

With regard to the Interoperability NPRM on the proposed agenda, I urged that the Commission should refrain from making any preliminary conclusions with regard to interoperability for the entire 700 MHz band, such as limiting interoperability to the lower 700 MHz band only. First, the Commission's record on this is incomplete. The Commission should not make presumptions as to the feasibility of interoperability for the entire band without soliciting comment on this issue and allowing all interested parties to make their case.

Second, interoperability for the entire band has profound potential consequences for public safety in light of the Jumpstarting Opportunities with Broadband Act (JOBS Act) included in the Payroll Tax Holiday Extension legislation. Section 6106 of the JOBS Act reallocates the D Block in the upper band to public safety. Section 6106(b)(1)(C) encourages leveraging existing commercial wireless infrastructure. Section 6106(b)(2)(B) requires the standards adopted by the First Responder Network ("FirstNet") "promote competition in the equipment market" and be built to "open, non-proprietary standards" that "enable use by any public safety entity and multiple vendors" and are "backward-compatible with existing commercial networks to the extent that such capabilities are necessary and technically and economically feasible." Furthermore, FirstNet will enter into roaming agreements with commercial providers to ensure nationwide coverage. Sec. 6106(c)(5). Finally, Congress intended that FirstNet support itself through usage fees and lease fees. Sec. 6208.

The D Block and public safety block are in the upper 700 MHz band. The nature of any interoperability requirement for commercial users therefore has profound impact on how FirstNet and the FCC can meet the obligations of the Act. For example, it is easy to see that expanding the universe of commercial providers capable of roaming on upper 700 MHz spectrum will facilitate the negotiation of roaming agreements, enhance lease revenues, and enhance FirstNet's capability to leverage commercial infrastructure. It will also generally lower the cost of equipment and enhance the ability to develop equipment that will "promote competition in the equipment market" and the adoption of open, non-proprietary standards.

Furthermore, passage of the JOBS Act limited the Commission's ability to promote competition through eligibility restrictions. Accordingly, the Commission should consider whether it must take more aggressive steps to address competition concerns, such as expanding interoperability to the upper 700 MHz band.

Considering these questions should not prevent the Commission from adopting rules for lower 700 MHz band interoperability initially, given the more developed state of the record with regard to lower 700 MHz and the additional technical issues that may be needed to be overcome for full interoperability in the 700 MHz band. What is critical at this stage is that the Commission ensure that its policy on interoperability include consideration of the recent legislation so that it may undertake a comprehensive policy approach.

MSS NPRM

With regard to the MSS NPRM on the tentative agenda, I expressed support for flexibility for MSS licensees, but urged the FCC to solicit comment on the following.

First, the FCC should solicit comment on what rules with regard to the MSS band flexibility would facilitate greater competition and innovation in the provision of wireless services. Because current law prohibits the FCC from auctioning MSS flexibility or charging spectrum fees, the Commission should consider how to otherwise ensure the benefit to the public from the expanded spectrum rights. Even the potential benefit of expanded capacity may be detrimental if it exacerbates the existing "spectrum divide" between the two largest carriers and competing carriers.

Second, the FCC should solicit comment on how to resolve potential interference disputes between MSS licensees operating in accordance with the adopted service rules and other primary licensees operating in accordance with their service rules. As the Commission has consistently rediscovered every time it has sought to expand flexibility for licensees, unexpected interference issues can arise in the course of deployment despite the best efforts of all participants to formulate appropriate rules. As the Commission observed when permitting MSS/FSS leasing last year, "We emphasize that responsibility for protecting services rests not only on new entrants but also on incumbent users themselves, who must use receivers that reasonably discriminate against reception of signals outside their allocated spectrum." ET Docket No. 10-142 ¶ 28.

If the Commission expects MSS licensees to invest in deployment of new broadband services based on flexibility, the Commission provide some certainty that an unanticipated interference issue will not create indefinite delay and uncertain new expenses. Parties must have some means to assess the risk, including the potential cost of remedies, or they will decline to invest.

In accordance with Section 1.1206(b), this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

Respectfully submitted,

/s/Harold Feld
Legal Director

cc:
Amy Levin