



NEW AMERICA
FOUNDATION

February 7, 2014

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

Re: Notice of Oral *Ex Parte* Presentation

Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, GN Docket No. 12-268;

Policies Regarding Mobile Spectrum Holdings, GN Docket No. 12-269

Commercial Operations in the 3550-3650 MHz Band, GN Docket No. 12-354

Operation of Part 15 Devices in the UNII Band, GN Docket No. 13-49

Dear Ms. Dortch:

On February 5, 2014, Michael Calabrese of the New America Foundation, Harold Feld of Public Knowledge and Todd O’Boyle of Common Cause, on behalf of the groups affiliated with the Public Interest Spectrum Coalition (PISC), met with Commissioner Ajit Pai and his wireless advisor Jeffrey Neuman, as well as with Commissioner Michael O’Rielly and his wireless advisor Erin McGrath. The points noted below were covered at both meetings, except as noted.

The public interest advocates initially described the growing consensus that unlicensed spectrum is both a complement to licensed and increasingly central to the wireless economy. The advocates reviewed the rapidly increasing share of mobile device data traffic that is off-loaded over Wi-Fi. The PISC representatives asserted that Wi-Fi offload has been the single biggest factor in avoiding the feared “spectrum crisis” that is in fact premised on the difficulty of repurposing more high-power and exclusively-licensed spectrum. The PISC representatives noted a European Commission study in August projecting that roughly 80 percent of mobile device traffic in western Europe will be over Wi-Fi by the end of 2016, both ensuring consumers better connectivity at lower prices and saving carriers across the 27 Euro Zone nations an estimated \$200 billion a year in spectrum license and infrastructure costs compared to what they would need to spend to supply the same bandwidth.

Despite the growing importance of unlicensed spectrum for the economy and a steady stream of positive statements from the Commission, the advocates stated that expanding access to unlicensed spectrum does not actually seem to be a priority at the Commission. In the wake of the Progeny order (which will potentially disrupt long-established use of the 900 MHz band for smart meter deployments and dozens of other uses), the continued uncertainty and lack of actual action on any pro-unlicensed item makes it increasingly harder for investors, entrepreneurs and developers to believe that the FCC is serious about developing next generation businesses and technologies in this country. Eventually, this capital and those jobs will move overseas where other countries are pursuing next generation unlicensed more aggressively.

With respect to the incentive auctions proceeding (Docket No. 12-268), the PISC representatives emphasized that the public interest is best served by band plan, auction and repacking policies that strike a balance between broadcast stations, licensed mobile operators *and ensuring at least 24 MHz of unlicensed access in every market nationwide*. We acknowledged that although last year's Spectrum Act imposed certain statutory guideposts, the Commission can and should promote competition and innovation by ensuring a sufficient amount of unlicensed access (24 to 30 MHz or more) in *every* market, which is necessary to promote and sustain markets of national scope and scale for unlicensed chips, devices and services.

We referenced five primary policies identified in PISC's incentive auction comments, which were filed by New America Foundation, Consumer Federation of America, Public Knowledge and the National Hispanic Media Coalition in January 2013 (the "January 2103 Comments"). These policies track closely with submissions in the comments of other unlicensed proponents.

- Designate an unlicensed and *contiguous* duplex gap and guard band that are both technically reasonable and sufficiently wide to accommodate a 6 MHz unlicensed channel.
- Maintain the two designated channels for wireless microphones, but open them for shared unlicensed use, subject to protecting microphone reservations via the TV Bands Database; and require microphones to rely first on out-of-market TV co-channels that are not available to unlicensed devices.
- Permit unlicensed access to Channel 37 subject to TV Bands Database-enforced exclusion areas sufficient to protect radio astronomy and WMTS.
- Maintain the status quo with respect to unlicensed access to 600 MHz spectrum, post-auction, in each local area until it is actually in use, applying the same "use-it-or-share-it" approach that the Commission has proposed for GAA access to licensed (Priority Access) spectrum in the 3.5 GHz band.

- “Repack with a purpose” with respect to secondary broadcast licensees, particularly LPTVs, by strictly enforcing a substantial service requirement (i.e., no extensions or relocations for construction permits), not extending DTV transition deadlines, and requiring secondary broadcast licensees to share channels as a condition of reassignment and/or renewal if their service will not require a full 6 MHz channel.

The PISC representatives also observed that since large portions of 600 MHz band spectrum will remain unused in large portions of the country for many years after the incentive auction – and many rural and small town areas may not be built out even at the end of the initial license term – a use-it-or-share-it approach post-auction would maintain the status quo, since under current rules unoccupied 600 MHz spectrum does not lie fallow but can be *used* for broadband services, subject to automatic protections for incumbents enforced by the TV Bands Database (TVDB). PISC has noted in filed comments that licensees lose no rights whatsoever and bear a *de minimus* burden to simply inform the Commission and/or one TVDB administrator 30 days (or possibly more) prior to commencing substantial service in a particular local area. Unlicensed devices can be immediately denied permission to operate.

Commissioner Pai’s wireless counsel asked if we had reviewed a proposal from Intel related to auctioning guard band spectrum in 600 MHz that might otherwise be made available for unlicensed use. The PISC representatives said they had not studied the proposal, but cautioned that Congress arrived at a hard-fought compromise in the Spectrum Reform Act of 2012 that explicitly authorized the Commission to designate “technically reasonable” guard bands for unlicensed use, as a means of ensuring that emerging markets for unlicensed chips, devices, services and applications would have the certainty of a sufficient amount of unlicensed spectrum in every market. The advocates also noted that a proposed reservation price based on FCC estimates of the future value of unlicensed use is fraught with difficulty. We noted that any such estimate of the future value of the 2.4 GHz band, at the time of allocation, would have grossly underestimated the value to consumers, to carriers, and to the broader economy.

With respect to the 3.5 GHz band proceeding (Docket No. 12-354), the group reiterated PISC’s support for the “Citizen’s Broadband Service” concept proposed in the NPRM and *Revised Framework* Public Notice. Enabling small cell band sharing is the most pro-consumer means of meeting exploding mobile data demand. PISC’s comments and reply comments strongly supported the proposed 3-tier access model for federal spectrum sharing based on last year’s PCAST recommendations. Most critically, the Commission’s proposed 3-tier model – governed by a neutral Database mechanism (Spectrum Access System) – provides a framework for sharing additional Federal bands beyond 3.5 GHz. PISC supports reserving, at least initially, a majority of the 3550-3700 MHz band for General Authorized Access (GAA) and no less than 50 MHz in any local market.

With respect to expanding unlicensed access in the 5 GHz band (GN Docket No. 13-49), the advocates expressed strong support for the view that the Commission should move immediately to an initial order that would expand unlicensed access to the U-NII-1 band for outdoor use at full Part 15 power.

Respectfully submitted,

/s/

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cc: Erin McGrath
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