



NEW AMERICA
FOUNDATION

February 12, 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 10, 2014, Michael Calabrese of the New America Foundation, Harold Feld of Public Knowledge, Matt Wood of Free Press, and Michael Scurato of the National Hispanic Media Coalition, on behalf of the Public Interest Spectrum Coalition (PISC), met with Commissioner Mignon Clyburn and her Legal Advisor Louis Peraertz.

The public interest advocates initially described the growing consensus that unlicensed spectrum is both a complement to licensed and central to the wireless economy, generating on the order of \$100 billion in economic activity each year in the U.S. alone. The advocates reviewed the rapidly increasing share of mobile device data traffic that is off-loaded over Wi-Fi, noting for example a European Commission study in August projecting that roughly 80 percent of mobile device traffic in western Europe will go over Wi-Fi by the end of 2016. That offload both ensures consumers better connectivity at lower prices and saves 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. Wi-Fi offload demonstrates the fallacy as well of the supposed “spectrum crisis” that is in fact premised on, if anything, the difficulty of clearing and repurposing exclusively licensed spectrum.

Despite this current and growing importance of unlicensed spectrum for the economy and a steady stream of positive statements from the Commission, the advocates expressed concern that expanding access to unlicensed spectrum does not actually seem to be a priority at the Commission. 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 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 2013 Comments"). These policies track closely with submissions in the comments of other unlicensed proponents.

- Designate an unlicensed and *contiguous* duplex gap, as well as a guard band, that are both technically reasonable and sufficiently wide to accommodate a 6 MHz unlicensed channel. Accomplishing this was a hard-fought compromise anticipated in the Spectrum Reform Act of 2012.
- 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. These could be the first two available channels below the new LTE band.
- 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.

In Monday’s meeting, NHMC and Free Press underscored that one probable outcome of the incentive auctions is that many people of color who hold licenses to operate television stations will exit the market during the reverse auction and will not have a realistic opportunity to participate in the forward auction. As a result, diverse ownership of spectrum licenses could drop well below current levels. Mr. Scurato asked Commissioner Clyburn and her staff to consider policies that would examine and mitigate the harms caused by this loss of diversity.¹ First, the Commission should be prepared to collect data on the amount of minority and female owners that relinquish their spectrum licenses throughout the incentive auction process and report on that data and, if necessary, take remedial action immediately after the auctions have concluded. Second, the Commission should make efforts to maximize the amount of unlicensed spectrum available after the auction. Minority entrepreneurs and community leaders face fewer barriers while attempting to innovate with and deploy unlicensed spectrum. Ensuring that unlicensed spectrum is made available during the auction process could help serve underserved communities and create economic opportunities for minority-owned firms.

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.

¹ See Comments of the National Hispanic Media Coalition, Docket No. 12-268 (filed Jan. 25, 2013), *available at* <http://www.nhmc.org/sites/default/files/NHMC%20Incentive%20Auction%20Comment.pdf>; Comments of the Leadership Conference on Civil and Human Rights, Docket No. 12-268 (filed Jan. 25, 2013), *available at* <http://apps.fcc.gov/ecfs/document/view?id=7022112208>.

Respectfully submitted,

/s/

Michael Calabrese
Director, Wireless Future Project
Open Technology Institute
New America Foundation
1899 L Street, NW 4th Floor
Washington, DC 20036

cc: Louis Peraertz