



January 29, 2024

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: *Expanding Flexible Use of the 12.2-12.7 GHz Band, WT Docket No. 20-443*
Unlicensed Use of the 6 GHz Band, ET Docket No. 18-295
Shared Use of the 42-42.5 GHz Band, WT Docket No. 23-158; WT Docket No. 14-177

Dear Ms. Dortch:

On January 25, 2024, Michael Calabrese, representing the Open Technology Institute at New America (OTI), met in person with Edyael Casaperalta, wireless legal advisor to Commissioner Anna Gomez, about the above-listed proceedings.

First, with respect to the **12 GHz proceeding**, I reiterated key points from the Comments we filed with other Public Interest Organizations on August 9.¹ I emphasized that while we support license modifications that would expand the terrestrial rights of incumbent MVDDS licensees – including higher power, two-way and point-to-multipoint use of the band – we believe that this outcome should be contingent on two public conditions:

- ***A Tribal set-aside condition:*** The license rights to all or at least a substantial portion of the 500 megahertz on Tribal lands should be made freely available for broadband deployment at the request of Tribal authorities. We recommend this be done by partitioning the license and transferring the rights to Tribal governments, preferably with the consent of the current holders of MVDDS licenses. The Commission should also move rapidly to adopt these provisions so that tribes and all licensees can take advantage of the BEAD funding that could subsidize tribal deployment in the 12.2 and 12.7 GHz bands.²

¹ Comments of the Public Interest Organizations, *Expanding Flexible Use of the 12.2-12.7 GHz Band, Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, WT Docket 20-443, GN Docket No. 22-352 (August 9, 2023).

² *Id.* At 23-26.

- **A ‘use it or share it’ condition:** While incumbent terrestrial licensees should receive priority access, unused spectrum in the band should be authorized for opportunistic access on a non-interfering basis. Conceptually, the PIOs proposed a framework analogous to the three-tier Citizens Broadband Radio Service (“CBRS”): A primary tier that protects the fixed customer locations of the incumbent DBS and NGSO satellite services; a priority access tier for the expanded FWA deployments of incumbent MVDDS licensees; and a third tier of coordinated general authorized access on an opportunistic, non-interfering basis.³ This third tier, allowing secondary and temporary unlicensed or GAA use by WISPs or other operators, would be on a non-interfering basis and coordinated by the same frequency coordination system that will be necessary to protect the fixed satellite customer locations from interference.

With respect to the **6 GHz proceeding**, I urged a rapid resolution of the remaining issues in the 2020 FNPRM that remain unresolved. In particular, I explained why the authorization of a somewhat higher maximum power level (8 dBm/MHz PSD) for indoor-only (LPI) use is particularly crucial for digital equity and inclusion, for continued U.S. leadership in next generation Wi-Fi, and for virtually all consumers, businesses and community anchor institutions.

I noted that OTI was among the 18 national nonprofits that warned, in a letter last August to Chairwoman Rosenworcel, that the failure to raise the power level for LPI risks creating a new “Wi-Fi digital divide” by causing a disproportionate number of lower-income and less tech-savvy households to miss out on the full benefits of next generation Wi-Fi.⁴ Less expensive and complex LPI use of the band across the entire 1,200 megahertz is needed so that the sort of multi-gigabit throughput, low latency and deterministic scheduling that allows innovations in 5G/6G applications will be available in any home, business, school or library that has a fiber or other high-capacity connection to the internet.

Finally, concerning the **42 GHz proceeding**, I summarized key points in the Reply Comments that OTI and Public Knowledge filed last September 29.⁵ I emphasized our belief that the comments filed by stakeholders demonstrate a general consensus that in the 42-42.5 GHz band a framework premised on open access, non-exclusive licensing by rule, and automated database coordination will best serve the public interest. An automated sharing framework will

³ *Id.* at 5-15.

⁴ Letter from 18 Public Interest Organization to FCC Chairwoman Jessica Rosenworcel, *Unlicensed Use of the 6 GHz Band*, ET Docket No. 18-295 (Aug 3, 2023).

⁵ Reply Comments of Open Technology Institute at New America and Public Knowledge, GN Docket No. 23-158 (Sept 29, 2023). *See also* Comments of Open Technology Institute at New America and Public Knowledge, GN Docket No. 23-158 (Aug. 30, 2023).

be especially beneficial if it can be used to coordinate and optimize local access for a diversity of users and use cases across both the 42 GHz and the Lower 37 GHz bands, a total of 1,100 megahertz, thereby facilitating far greater flexibility, capacity and coexistence.

Further, I noted our belief that coordination and coexistence among multiple users without static “first-in-time” rights will work particularly well if the Commission puts both the 42 and 37 GHz bands under a common coordination framework under rules that allow the AFC to “broker” (and perhaps even require) a combination of band splitting and reduced power levels that optimize sharing.

Finally, I noted that putting both bands under a common coordination framework would benefit Federal users that seem reluctant to accept co-primary status in the Lower 37 GHz band if that potentially precludes their access in the future. The flexibility inherent in coordination across 1,100 megahertz by an AFC gives the Commission and NTIA more leeway to agree to give Federal users some form of “super priority” status in a portion of the Lower 37 GHz band (e.g., on 37-37.3 GHz). Accordingly, since the Lower 37 GHz band is currently designated for ‘study’ as part of the National Spectrum Strategy, if the Commission pursues this approach it could expedite the resolution of any issues that are delaying a framework for efficient Federal and non-Federal sharing of that band.

Respectfully submitted,

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cc: Edyael Casaperalta