



ENSURING US LEADERSHIP IN 5G

March 28, 2022

VIA ECFS

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

Dear Ms. Dortch,

On March 24, 2022 representatives of the 5G for 12 GHz Coalition (“Coalition”)¹ and the undersigned counsel of INCOMPAS met by phone with legal advisors from the offices of Chairwoman Jessica Rosenworcel and Commissioner Geoffrey Starks to discuss the pending *Notice of Proposed Rulemaking* (“12 GHz NPRM”) in the above-referenced proceeding. A full list of participants in these meetings is provided in Attachment A.

In the meeting, the Coalition explained that its efforts to encourage the Commission to open up the 12.2-12.7 GHz (“12 GHz”) band for two-way terrestrial, 5G mobile service, and opportunistic use continues to gain support from a wide array of policy thought leaders,² public

¹ The 35 members of the Coalition are: INCOMPAS, Public Knowledge, DISH, Computer & Communications Industry Association, RS Access, Benton Institute for Broadband & Society, Open Technology Institute at New America, Federated Wireless, Airspan, AltioStar, A-Side Technology, AtLink, Cambridge Broadband Network Groups, Center for Educational Innovation, Center for Rural Strategies, Dell Technologies, Etheric Networks, GeoLinks, Globtel Holding, GoLong Wireless, Granite Telecommunications, Mavenir, mmWave Tech, MVD Number 53 Partners, NextLink, Resound Networks, Rise Broadband, Rural Wireless Association, TelNet Worldwide, Tilson, VMWare, WeLink, White Cloud, Xiber and X-Lab.

² At the 2022 INCOMPAS Policy Summit, Rep. Mike Doyle (D-PA), Chairman of the House Subcommittee on Communications & Technology, and several Commissioners voiced their support for opening the 12 GHz band to 5G uses if the engineering studies and record supported coexistence between satellite and terrestrial use. See Rep. Mike Doyle, U.S. House of Representatives, Keynote at the 2022 INCOMPAS Policy Summit (Feb. 9, 2022), *available at* <https://www.youtube.com/watch?v=AIFZYCw4kEM&list=PLjNWv97dGV-rUB6DaHw0mcasAGbTaiN4J&index=20>; Brendan Carr, Commissioner, Fed. Commc’n Comm.CC, Remarks at the 2022 INCOMPAS Policy Summit (Feb. 8, 2022), *available at* https://www.youtube.com/watch?v=NoK6IX_ViFI; Nathan Simington, Commissioner, FCC, Remarks at the 2022 INCOMPAS Policy Summit (Feb. 8, 2022), *available at* https://www.youtube.com/watch?v=InzbjA_TVhw&list=PLjNWv97dGV-rUB6DaHw0mcasAGbTaiN4J&index=4.

interest groups, and service providers. To that end, the Coalition introduced the Benton Institute for Broadband & Society—with its objectives of bringing open, affordable, high-speed broadband to all people in the U.S.—as the newest member of the 5G for 12 GHz Coalition.³ The Benton Institute has enthusiastically joined the call for the Commission to open up the 12 GHz band to two-way higher power terrestrial use. The Institute recognizes that Americans rely on a continuum of connectivity at home and on the move throughout their day and efficient use of spectrum is critical to meeting Americans’ connectivity needs. Benton believes that the engineering work submitted by members of the Coalition shows that interoperability in the band is possible, and the Commission should give the green light in this proceeding so that new wireless companies can begin to make use of this spectrum for bringing innovative and competitive 5G service to more people, including leveraging Open RAN in the deployment of 12 GHz.

Additionally, the Coalition highlighted the D.C. Circuit’s recent 3-0 decision upholding the Commission’s 6 GHz sharing order.⁴ The Court’s decision reaffirmed the Commission’s authority as primary spectrum regulators and leading experts to assess interference and rejected arguments that spectrum sharing should be prohibited unless zero interference is found. The D.C. Circuit supported the Commission’s assertion in the 6 GHz order to rely on a statistical, or “Monte Carlo” analysis which “can provide a more complete view of potential outcomes and their associated likelihoods.”⁵ The Coalition urged the Commission to rely on a similar analysis when making further determinations in the 12 GHz proceeding. The technical and engineering studies entered into the record by proponents of expanding the band for more flexible use contain the same kind of Monte Carlo-style statistical analysis used in the 6 GHz proceeding. These simulations show a negligible potential for interference with Starlink terminals and provide compelling reasons to unleash 500 megahertz of spectrum in the 12 GHz band for 5G and opportunistic use.

The Coalition also responded to a series of recent assertions by DBS and NGSO FSS stakeholders about the technical, engineering, and economic studies submitted by its members into the record. The Coalition explained that a recent SpaceX filing misrepresents the findings of the DBS interference studies submitted by DISH in this proceeding. Among other things, the 2016 study was conducted using worst case scenarios, rather than the probabilistic Monte Carlo analysis supported by the D.C. Circuit’s 6 GHz decision, and assumed low look angles which have never been deployed in practice.⁶ Furthermore, the

³ See 5G for 12 GHz Coalition, Press Release, *Coalition Welcomes New Member Benton Institute for Broadband & Society, Bringing Membership to 35* (Mar. 22, 2022), available at <https://5gfor12ghz.com/coalition-welcomes-benton-institute/>.

⁴ *AT&T Servs., Inc. v. FCC*, -- F.4th -- No. 20-1190, 2021 WL 6122734, at *6 (Dec. 28, 2021).

⁵ *Id.* at *4.

⁶ See Letter of Pantelis Michalopoulos, Counsel to DISH Network Corporation, to Marlene Dortch, Secretary, FCC, WT Docket No. 20-443, GN Docket No. 17-183 (filed Jan. 13, 2022).

study did not take into account recent technical advances that can facilitate spectrum sharing in the band or the significant modifications made by satellite operators to current NGSO FSS systems.

Finally, the Coalition urged the Commission to deny SpaceX's blanket license application for the operation of second generation earth stations in motion ("ESIMs") that would communicate with the company's non-geostationary orbit satellite system, insofar as the application seeks to use the 12.2.-12.7 GHz band.⁷ As noted in a recent filing by RS Access, the Commission "has not allocated the 12 GHz band for ESIM use" and "has acted with extreme caution in allowing even temporary or experimental ESIM use of the 12 GHz band."⁸ The Coalition agrees with RS Access' assessment that "Starlink's pursuit of ESIM authority in the 12 GHz band seems principally intended to prevent sharing, rather than promote diverse services with enormous benefits for consumers."⁹ The Coalition indicated that SpaceX already has 1500 megahertz of other spectrum in which it is authorized to use ESIMs, and further efforts to use the 12 GHz band for this purpose would prejudice the Commission's ongoing rulemaking in this proceeding.

If you have any questions about this filing, please feel free to contact me.

Respectfully submitted,

/s/ Christopher L. Shipley

Christopher L. Shipley
Attorney & Policy Advisor
(202) 872-5746

CC

Ethan Lucarelli
William Davenport

⁷ See generally SpaceX Services, Inc. Consolidated Response to Petitions, IBFS File No. SES-LIC-20210803-01360 (filed March 10, 2022).

⁸ See Letter of V. Noah Campbell, CEO, RS Access, LLC to Marlene H. Dortch, Secretary, FCC, IBFS File No. SES-LIC-20210803-01360 (filed Mar. 22, 2022) at 1, 2.

⁹ *Id.* at 2.

ATTACHMENT A

March 24, 2022 Meeting with Chairwoman Rosenworcel's Office

5G for 12 GHz Coalition

- Andy Schwartzman, Benton Institute for Broadband & Society
- Chip Pickering, INCOMPAS
- Christopher Salemme, Airspan
- Christopher L. Shipley, INCOMPAS
- Daniel Shuchman, MSD Capital, L.P.
- James Childs, BroadbandOne
- Jeff Blum, DISH
- Kathleen Burke, Public Knowledge
- Lindsee Gentry, Rational360
- Michael Calabrese, Open Technology Institute at New America
- Michael Essington, DISH
- Michael Gerstner, MSD Capital, L.P.
- Tim Meyer, GoLong Wireless
- V. Noah Campbell, RS Access LLC

Office of the Chairwoman

- Ethan Lucarelli, Legal Advisor, Wireless and Public Safety

March 24, 2022 Meeting with Commissioner Starks Office

5G for 12 GHz Coalition

- Andy Schwartzman, Benton Institute for Broadband & Society
- Chip Pickering, INCOMPAS
- Christopher Salemme, Airspan
- Christopher L. Shipley, INCOMPAS
- Daniel Shuchman, MSD Capital, L.P.
- James Childs, BroadbandOne
- Jeff Blum, DISH
- Kathleen Burke, Public Knowledge
- Lindsee Gentry, Rational360
- Michael Essington, DISH
- Michael Gerstner, MSD Capital, L.P.
- Tim Meyer, GoLong Wireless
- V. Noah Campbell, RS Access LLC

Office of Commissioner Starks

- William Davenport, Chief of Staff & Senior Legal Advisor for Wireless and International