Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Revision of Part 15 of the Commission's	)	ET Docket No. 13-49
Rules to Permit unlicensed National	)	
Information Infrastructure (U-NII)	)	
Devices in the 5 GHz Band	)	
	)	

To: The Commission

OPPOSITION OF PUBLIC KNOWLEDGE

TO

PETITION FOR RECONSIDERATION OF

ASSOCIATION OF GLOBAL AUTOMAKERS, INC.,

AND

ALLIANCE OF AUTOMOBILE MANUFACTURERS

Harold Feld
Senior Vice President
John Gasparini
Policy Fellow
Public Knowledge
1818 N Street NW, Suite 410
Washington, DC 20036

June 6, 2016

INTRODUCTION

Public Knowledge, pursuant to Rule 1.429(f)[1], file this *Opposition* to the Petition for Reconsideration of the Association of Global Automakers, Inc. and the Alliance of Automobile Manufacturers (collectively "Auto Manufacturers").[2] As explained below, while the *Petition* has neither sound legal basis nor sound engineering analysis, the Commission should provide the Auto Manufacturers limited relief by eliminating the designation of Channel 172 as reserved for life and safety traffic.

The Auto Manufacturers do not even pretend to show that the rule changes that they protest would cause harmful interference to DSRC. Instead, the Auto Manufacturers rely solely upon a simple comparison between the previously permitted OOBE limits and the new OOBE limits and noting with numerous descriptors how impressive they find the difference. However impressive the Auto Manufacturers may find the difference between two numbers, they fail to identify how the Commission's decision would create harmful interference to DSRC systems as defined by Rule 2.1.[3] Nor do they identify any legal error in the Commission's rejection of precisely this claim as part of the *2016 Recon Order*.[4]

Because the Auto Manufacturers' *Petition* fails either to introduce facts not in evidence at the time of the Commission decision or to provide evidence that they will suffer harmful

[1] 47 C.F.R. § 1.429(f)

[2] Association of Global Automakers, Inc. and the Alliance of Automobile Manufacturers, Petition for Reconsideration, *In the Matter of Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band,* ET Docket No. 13-49 (May 6, 2016) ("Petition").

[3] 47 C.F.R. § 2.1.

[4] *In the Matter of Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band,* ET Docket No. 13-49, Unlicensed-National Information Infrastructure, Order on Reconsideration (Apr. 6, 2016) ("2016 Recon Order").

interference (as the Commission's rules define that term), the Commission would normally dismiss the *Petition* as legally and substantively inadequate. In this case, however, the Commission can – and should – address the purported grievances of the Auto Manufacturers by relocating the life and safety channels to the top 20 MHz of the band. This would require eliminating the designation of Channel 172 as a "life and safety only" channel and designating Channel 182 as the alternate "life and safety only" channel. This will not only create enormous distance between the life and safety channel and the OOBE (since it appears to be size, rather than quality engineering, that impresses the auto industry), but will also enhance the overall efficiency of the channels designated for life and safety.

ARGUMENT

The Commission's efforts to enact sensible rules to improve the operation of the UNII bands generally, and UNII-3 in particular, are now several years old. The Auto Manufacturers, and their members, have had every opportunity to participate in this lengthy process. Indeed, the Association of Global Automakers filed reply comments and a separate *Petition* – which the Commission considered and rejected.[5]

In apparent disbelief that anyone could spurn the pleadings of the mighty auto industry, Auto Manufacturers insist that the UNII-3 rules were adopted "without reasonable opportunity for affected parties to be heard."[6] This flies in the face of the record, which clearly establishes that Petitioners ***did*** have the opportunity to be heard. As if to underscore the absurdity of their argument, the Auto Manufacturers provide no engineering data to support any claim that they will suffer harmful interference. Instead, the ***sole*** piece of engineering analysis submitted is a

[5] *See* 2016 Recon Order at ¶¶ 17-23.
[6] *See* Petition at 3.

comparison of the permitted OOBE as distinguished between the 2014 Order[7] and the 2016 Order on Reconsideration.[8] The Auto Manufacturers provide no evidence that this difference will cause harmful interference to DSRC systems. To the contrary, The Auto Manufacturers appear to believe that simply repeating their previous claims, but with additional superlatives, meets the evidentiary standard required by the Commission's rules for a Petition for Reconsideration.

I. THE AUTO MANUFACTURERS ARE ENTITLED TO PROTECTION FROM "HARMFUL INTERFERENCE." BECAUSE THEY HAVE FAILED TO EVEN PRETEND TO DEMONSTRATE HARMFUL INTERFERENCE, THE PETITION SHOULD BE REJECTED.

Based on the text of the *Petition,* the Auto Manufacturers labor under the false impression that they are entitled to a specific spectrum environment. Even if such a thing were technologically possible, even if it did not fly in the face of the last five years of spectrum policy, even if we could imagine that auto manufacturers with their horribly outdated DSRC technology constitute some exceptional special snowflake around which the rest of the wireless world must contort itself, the law does not support such an approach. Section 309(h) states quite explicitly that the ***only*** right a licensee can claim is the right to operate in the manner described by the license.[9]

Similarly, the Auto Manufacturers demonstrate a profound ignorance of both the law and their own technology when they maintain that the new OOBE limits will jeopardize the billions of dollars invested in DSRC development. First, as a legal matter, Section 304 of the Communications Act of 1934, as amended, renders this consideration a nullity.[10] Second, but of

[7] *In the Matter of Revision of Part 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (U-NII) Devices in the 5 GHz Band*, ET Docket No. 13-49, First Report & Order (Apr. 1, 2014) ("2014 Order").

[8] *See* Petition at 14, Fig. 1.

[9] 47 U.S.C. § 309(h).

[10] 47 U.S.C. § 304.

far greater importance, the Auto Manufacturers fail to include any evidence that the increased OOBE limits will actually cause harmful interference as defined in Rule 2.1. *I.e.,* "Interference which endangers the functioning of a radio navigation service or of other safety services or seriously degrades, obstructs, or repeatedly interrupts a radio communication service" While the Auto Manufacturers no doubt fervently believe that it should be unnecessary for them to prove any actual impact of the new OOBE limits on their DSRC systems, interference is not a matter of faith. Petitioners are required to produce actual ***evidence*** that the new OOBE limits will cause harmful interference to DSRC systems, as the FCC's rules define "harmful interference."

Having failed to produce actual evidence of harmful interference, or suggested any error in the Commission's analysis explicitly rejected their previous claim, Petitioners have failed to meet their burden.

II. THE COMMISSION SHOULD ELIMINATE THE DESIGNATION OF CHANNEL 172 AS EXCLUSIVELY FOR LIFE AND SAFETY; AND RELOCATE ALL LIFE AND SAFETY TRAFFIC TO CHANNELS 182 AND 184.

Although Petitioners have failed to meet their burden, the Commission can still provide them with relief. The Auto Manufacturers express their chief distress that the Commission has specified Channel 172 as one of the two 10 MHz channels designated exclusively for life and safety signal. There is, however, no engineering reason for this designation. The Commission designated Channels 172 and 184 exclusively for life and safety traffic in 2006, in response to a request from the industry, to relieve anticipated congestion from non-life and safety traffic.[11]

[11] *Amendment of the Commission's Rules Regarding Dedicated Short-Range Communication Services in the 5.850-5.925 GHz Band (5.9 GHz Band)*, WT Docket No. 01-90; *Amendment of Parts 2 and 90 of the Commission's Rules to Allocate the 5.850-5.925 GHz Band*

Needless to say, the failure of the Auto Manufacturers to successfully deploy DSRC units to date has meant that the anticipated suggestion from non-life and safety systems never emerged. For that matter, it is unclear if DSRC systems will ever need a single dedicated 10 MHz channel for life and safety applications, let alone 2 dedicated channels.

Accordingly, the Commission can provide the Auto Manufacturers the reassurance they crave by eliminating the designation of Channel 172 for life and safety messages. If the Commission still believes that a reservation of two 10 MHz channels remains advisable, the Commission should designate Channel 182 to replace Channel 172. This would relocate all life and safety traffic to the top 20 MHz of the DSRC band. Because the Commission's rules require that all DSRC devices have the capacity to detect incoming life and safety messages, and dynamically prioritize these messages and route them to any DSRC channel, this directive can be achieved at zero cost to DSRC licensees.[12]

to the Mobile Service for Dedicated Short Range Communications of Intelligent Transportation Services, ET Docket No. 98-95, RM-9096, *Memorandum and Order,* 21 FCC Rcd 8961 (2006) ("2006 DSRC Order").

[12] *See* 47 C.F.R. §§ 90.377, 90.379.

CONCLUSION

Although the Auto Manufacturers have failed to provide any evidence to justify their Petition, the Commission should nevertheless grant the Auto Manufacturers partial relief. By eliminating the designation of Channel 172 for life and safety, and replacing it with Channel 182, the Auto Manufacturers will have a guard band of over 50 MHz between the UNII-3 band and the channels designated for life and safety. This massive guardband should be more than sufficient, particularly in light of the utter failure of the Petitioners to produce any evidence that any protections are necessary to avoid harmful interference.

Respectfully Submitted,

/s/ Harold Feld
Harold Feld
Senior Vice President
Public Knowledge
1818 N Street NW, Suite 410
Washington, DC 20036

June 6, 2016

CERTIFICATE OF SERVICE

I, Harold Feld, hereby certify that on this 6th day of June, 2016, I caused the foregoing Opposition to be filed via the Federal Communications Commission's ECFS system, and carried out service of this opposition on counsel for filers by means of electronic mail, pursuant to the Commission's rules specified in 47 C.F.R. § 1.429(f).

/s/ Harold Feld
Harold Feld

June 6, 2016