

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Expanding Flexible Use of the 12.2-12.7 GHz Band	)	WT Docket No. 20-443
	)	
Expanding Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use	)	GN Docket No. 22-352
	)	

**REPLY COMMENTS OF PUBLIC KNOWLEDGE AND  
THE OPEN TECHNOLOGY INSTITUTE OF NEW AMERICA**

Public Knowledge (PK) and Open Technology Institute (OTI) file these reply comments to address one point only – the need to provide licensed access on rural Tribal land in the 12.2-12.7 GHz portion of the band. DISH’s offer to provide permanent access to 100 megahertz of spectrum, while commendable, does not adequately reflect the importance of Tribal sovereignty. Nor does it reflect the continued growth of wireless networks on Tribal lands using combinations of licensed spectrum, unlicensed spectrum, and CBRS access. As these networks bring connectivity to these Tribes, the demand continues to grow. Tribes experience the same “virtuous cycle” that promotes the need for greater broadband capacity as the rest of the nation. They will quickly need the full 500 megahertz to adequately serve their communities. Given the enormous value of the expanded spectrum rights conveyed to incumbents, transfer of a small portion of the spectrum to sovereign Tribes on their own territory is a reasonable exchange.

## ARGUMENT

There is support in the record for initiatives that would give Tribes priority access to spectrum in the 12 GHz band.<sup>1</sup> DISH, a licensee of the band, has even stated that if it is granted new exclusive rights, it “is willing to make the lower 100 megahertz of the 12.2 GHz band available to requesting Tribal entities at no charge.” Although this proposal marks a step in the right direction on Tribal spectrum access, PK and OTI urge the Commission to adopt a more robust Tribal Spectrum Transfer program for the entire 500 megahertz of spectrum in the 12.2 GHz band.

First, if the Commission decides to grant MVDDS incumbents new exclusive use rights (or, as PK and OTI proposed in our comments, non-exclusive priority access rights), the Commission should partition the portion of the spectrum covering Tribal lands and transfer the licensing rights to Tribes that request the licenses on the same terms and conditions as the expanded incumbent licenses.<sup>2</sup> Adopting a spectrum set-aside program that would allow incumbent licensees to retain rights to spectrum after a Tribal entity has requested access runs contrary to the Federal Trust relationship the government and its agencies have with Tribes.

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<sup>1</sup> Comments of 5G for 12 GHz Coalition, *In the Matter of Expanding Flexible Use of the 12.2-12.7 GHz Band*, WT Docket No. 20-443, *In the Matter of Expanding Flexible Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, at 9 (Aug. 9, 2023), <https://www.fcc.gov/ecfs/document/10809986910294/1>; *See also* Comments of DISH Network Corporation, *In the Matter of Expanding Flexible Use of the 12.2-12.7 GHz Band*, WT Docket No. 20-443, *In the Matter of Expanding Flexible Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, at 17 (August 9, 2023), <https://www.fcc.gov/ecfs/document/1081099488681/1> [hereinafter Comments of DISH].

<sup>2</sup> Commenters’ preferred approach to opening up the 12 GHz Band for new rights continues to be the non-exclusive and coordinated shared access model we proposed during the commenting round. Comments of the Public Interest Organizations, *In the Matter of Expanding Flexible Use of the 12.2-12.7 GHz Band*, WT Docket No. 20-443, *In the Matter of Expanding Flexible Use of the 12.7-13.25 GHz Band for Mobile Broadband or Other Expanded Use*, GN Docket No. 22-352, at 5-16 (Aug. 9, 2023), <https://www.fcc.gov/ecfs/document/1081063457149/1>.

Creating a new license by partitioning the spectrum on a Tribal entity's land at their request<sup>3</sup> would restore an additional measure of sovereignty to Native American Tribes while also helping to address Tribal access to critical wireless services.

Second, instead of setting aside only 100 megahertz of spectrum in the 12.2 GHz band, the Commission should transfer the enhanced terrestrial license rights (whether exclusive or non-exclusive) for the full 500 MHz of spectrum to Tribal entities that request access in the 12.2 GHz band. As DISH explains, deploying wide channels will “enhance speeds and data rates, reduce latency, and reduce the cost of user equipment and base stations alike.”<sup>4</sup> Mobile operators have predicted “that for 5G success, operators should have access to multiple contiguous 100 megahertz channels in the 2025-2030 timeframe.”<sup>5</sup> This prediction is equally true for fixed wireless services.

While not nothing, 100 megahertz for fixed wireless backhaul and/or a point-to-multipoint deployment is not sufficient to meet the growing demands of the digital future. Tribes, like other communities, will need multi-gigabit capacity to make use of applications such as telemedicine, AR/VR, and IoT. Although priority access to at least some 12 GHz spectrum is better than none, the Tribal digital divide will continue to exist unless the Commission creates opportunities for Tribes to access the spectrum they need in sufficient contiguous quantities to match capacity with urban communities with access to fiber. Given the

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<sup>3</sup> Where Tribes do not request the license, the Commission should not relieve incumbents of their obligations to serve the tribes directly. PK and OTI do not propose that Tribes should be forced into a “take it or leave it” approach to spectrum in the band. DISH’s proposal to work with Tribes and to retain the ultimate rights (and responsibilities) for the licenses may appeal to some Tribes. But those Tribes that wish to exercise greater sovereignty over their own “public airwaves” should have the authority to do so.

<sup>4</sup> Comments of DISH at 35.

<sup>5</sup> 5G Mid-Band Spectrum: The Benefits of Full Power, Wide Channels, and Exclusive Licensing, Rysavy Research, at 16 (2022), <https://api.ctia.org/wp-content/uploads/2022/11/Rysavy-5G-Midband-Spectrum.pdf>.

tremendous value conferred to incumbent licensees of the proposed expanded spectrum rights, this comparatively tiny return of spectrum to Tribes in exchange is a bargain.

Additionally, transferring licensing rights for the full 500 megahertz to Tribal entities will continue to promote contiguity. In contrast, DISH's proposal to divide Tribal spectrum into a 100 megahertz chunk for Tribes and a 400 megahertz chunk for incumbents over tribal areas would create additional adjacent bands of exclusively licensed spectrum, which can increase the likelihood of out-of-band harmful interference and create coordination challenges. Indeed, DISH itself has pointed out the enormous value of maintaining uniform rules and single license use rather than breaking up the band into smaller chunks.<sup>6</sup>

### CONCLUSION

PK and OTI urge the Commission to ensure that any new rights granted to 12.2 GHz licensees are accompanied by additional public interest obligations in the form of a robust tribal spectrum transfer program—including a full transfer of an incumbent's license rights to the entire 500 MHz of the 12.2 GHz band with minimal coordination requirements.

Respectfully Submitted,

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46-A (Emergency Examination Waiver)*

September 8, 2023

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<sup>6</sup> See Comments of DISH at 35-36 (“Contiguity and uniformity of technical rules also means less adjacent bands and the corresponding likelihood of out-of-band harmful interference...”)