

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

In the Matter of)	
)	
Shared Use of the 42-42.5 GHz Band)	WT Docket No. 23-158
)	
Use of Spectrum Bands Above 24 GHz For)	GN Docket No. 14-177
Mobile Radio Services)	

REPLY COMMENTS OF INCOMPAS

INCOMPAS submits these reply comments in response to the Federal Communications Commission’s (“Commission”) *Notice of Proposed Rulemaking* in WT Docket No. 23-158 and GN Docket No. 14-177 seeking comment on deploying non-exclusive access models in the 42-42.5 GHz band (“42 GHz band”) in order to expand access to 5G and other next generation services.¹

Connecting our nation’s citizens to the next generation of high-speed broadband services will take an “all of the above” approach and require the Commission to promote policies that prioritize the networks of the future and enable broadband competition. Such competition is the leading driver for faster and more affordable service and is key to ensuring that residential and business customers will have access to the broadband provider and online services and applications of their choice. To that end, INCOMPAS commends the Commission for taking action in recent years to reduce barriers to deployment in the fixed and wireless markets and identifying spectrum that can be repurposed for the delivery of high-speed broadband using next

¹ *Shared Use of the 42-42.5 GHz Band, Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, WT Docket No. 23-158, GN Docket No. 14-177, Notice of Proposed Rulemaking, FCC 23-51 (rel. June 9, 2023) (“*Notice*”).

generation wireless technology,² particularly in the 12.2-12.7 GHz band, 42-42.5 GHz (“42 GHz band”) and 37-37.6 GHz (“lower 37 GHz band”), all of which can be made available for commercial use upon finalization of a sharing framework.

In the *Notice*, the Commission expresses interest in how non-exclusive spectrum access models “might be deployed in the 42 GHz band to provide increased access to high-band spectrum . . . and to support efficient, intensive use of the band.”³ To achieve this result, the Commission seeks comment on how certain aspects of the band, including the licensing framework and technical rules governing the band, could be modified to promote these additional operations. Given the urgent need to make additional spectrum available for 5G and future wireless services, INCOMPAS urges the Commission to consider immediate changes in the 42 GHz and lower 37 GHz band that align with advancements in spectrum sharing and enable an ecosystem where millimeter wave spectrum drives innovation, new technologies, and next-generation connectivity for American consumers and businesses.

Specifically, INCOMPAS urges the Commission to act quickly to adopt a technology-neutral licensed sharing framework in the lower 37 GHz band that can lay the predicate for the

² See, e.g., *Expanding Flexible Use of the 12.2-12.7 GHz Band*, WT Docket No. 20-443, Notice of Proposed Rulemaking, FCC 21-13 (Jan. 15, 2021) (determining whether terrestrial mobile wireless service could coexist with existing operations in the 12.2-12.7 GHz band); Jessica Rosenworcel, Chairwoman, FCC, Keynote Address at the 2022 NTIA Spectrum Policy Symposium (Sep. 22, 2022) (announcing that a forthcoming Notice of Inquiry would explore repurposing spectrum in the 12.7-13.25 GHz band for next-generation wireless technologies); Use of Spectrum Bands Above 24 GHz For Mobile Radio Services; Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, GN Docket No. 14-177, WT Docket No. 10-112 at paras. 37-40 (2018) (“*Third Report and Order*”) (reaffirming that the Lower 37 GHz Band will be available on a licensed shared basis).

³ *Notice* at para. 1.

Commission for a similar spectrum access model in 42 GHz. The association supports the Commission’s 2016 decision to allow coordinated shared access between fixed and mobile terrestrial operations in the 600 megahertz of spectrum in the lower 37 GHz band.⁴ This spectrum has significant potential to enable broadband deployment of fixed wireless service in communities across the country. To maximize the potential of the lower 37 GHz band, INCOMPAS urges the Commission to finalize the licensed sharing rules so that the spectrum can be widely used for the “high rate data services, and other innovative uses and applications” that the agency contemplated when it issued its *Third Report and Order* in this proceeding.⁵

INCOMPAS encourages the Commission to adopt the straightforward and technology-neutral sharing framework proposed by Starry which “builds off decades of Commission experience with site-based licensing” and examines how to maximize the use of the spectrum for both commercial and federal users.⁶ This flexible approach, which has received considerable support in the record,⁷ would leverage existing coordination tools through objective protection

⁴ *Use of Spectrum Band Above 24 GHz, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014, 8059-61, paras. 111-117 (2016) (“*Spectrum Frontiers R&O and FNPRM*”)

⁵ *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, GN Docket No. 14-177, WT Docket No. 10-112, Third Report and Order, Memorandum Opinion and Order, and Third Further Notice of Proposed Rulemaking, FCC 18-73, para. 28 (2018).

⁶ See Letter of Virginia Lam Abrams, Starry Inc., to Marlene Dortch, Secretary, FCC (filed July 13, 2017) at 2 (“2017 Starry Letter”); see also Letter from Virginia Lam Abrams, Starry Inc., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177 (filed July 16, 2021).

⁷ See, e.g., Comments of Charter Communications, Inc., WT Docket No. 23-158 at 7 (filed Aug. 30, 2023); Comments of WISPA – Broadband Without Boundaries, WT Docket No. 23-158 at 4 (filed Aug. 30, 2023).

criteria that not only addresses sharing concerns in the near term, but also contemplates “layering on additional tools” as needed to enhance the sharing framework over time.⁸ Starry’s proposed sharing framework is intended to open the spectrum to commercial use as soon as possible, while meeting the needs of new entrants who develop innovative, future uses for the band that require coordination.

Additionally, the Commission should reject proposals for the licensed shared framework that would require existing commercial operators to accommodate a specific vendor technology.⁹ Adopting a specific licensing environment would have the effect of requiring potential providers to reconfigure their network design. Such proposals undercut the spirit of the proceeding by unnecessarily narrowing the number of providers that can use the band. The Commission should not delay its adoption of a licensed shared framework any further, and stakeholders have had sufficient opportunity to review and comment on the various sharing proposals in the record.

Reaching unserved and underserved communities with new broadband technologies requires the type of creative decision-making that the Commission has exercised as it has explored making more intensive use of mid-band and millimeter wave spectrum. With the solutions its needs to repurpose the lower 37 GHz band for commercial use in hand, the Commission should act now to finalize the operational rules for the band so that providers can bring these innovative broadband service offerings to American consumers. Finalizing this approach in the lower 37 GHz band and applying it to the 42 GHz band will maximize the number of potential providers that can operate in these band and offer consumers the best chance to access reliable, affordable broadband and mobile services throughout the country.

⁸ 2017 Starry Letter at 6.

⁹ See Letter of John W. Kuzin, Vice President and Regulatory Counsel, to Marlene Dortch, Secretary, FCC, GN Docket No. 14-177, WT Docket No. 10-112 (filed June 2, 2021), at 1.

For the reasons stated herein, INCOMPAS urges the Commission to consider the recommendations in its reply comments as it examines the issues raised in the *Notice*.

Respectfully submitted,

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