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COMMENTS OF ITIF

to the

Federal Communications Commission

Washington, D.C.

In the Matter of:	)	
Facilitating More Intensive Use of Upper Microwave Spectrum	)	SB Docket No. 25-305

January 20, 2026

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INTRODUCTION AND SUMMARY

The Information Technology and Innovation Foundation appreciates the opportunity to comment on the Facilitating More Intensive Use of Upper Microwave Spectrum.[1] The proceeding is an opportunity for the Commission to enhance the productivity of Upper Microwave Flexible Use Spectrum (UMFUS) while also creating the flexibility that would enable more parties to use UMFUS bands without compromising the interference protection for which Commission licensees paid.

THE COMMISSION SHOULD NOT REDUCE THE PROTECTIONS OF UMFUS LICENSEES PREMATURELY

While the protections for UMFUS licensees relative to satellite gateways are contained in Commission rules, not licenses, it is all but certain that those who purchased UMFUS licenses did so in reliance on the strong protections promised by those rules.[2] To eliminate those protections would be dubious as a matter of policy and law. Whether the UMFUS bands have seen the kind of deployment the Commission expects is not in itself cause to reverse licensees' protections. There could be many reasons why a licensee does not deploy and the Commission has other avenues, some of which are proposed in this proceeding, to remove barriers to more productive use of these bands without substituting one set of rigid policy decisions for another.

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[1] [1] Founded in 2006, ITIF is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress. ITIF's goal is to provide policymakers around the world with high-quality information, analysis, and recommendations they can trust. To that end, ITIF adheres to a high standard of research integrity with an internal code of ethics grounded in analytical rigor, policy pragmatism, and independence from external direction or bias. For more, see: "About ITIF: A Champion for Innovation," https://itif.org/about; Notice of Proposed Rulemaking, Facilitating More Intensive Use of Upper Microwave Spectrum, SB Docket No. 25-305, FCC, October 28, 2025, https://docs.fcc.gov/public/attachments/DOC-415049A1.pdf.

[2] *See*, Incentive Auction of Upper Microwave Flexible Use Service Licenses in the Upper 37 GHz, 39 GHz, and 47 GHz Bands for Next-Generation Wireless Services Closes; Winning Bidders Announced for Auction 103, AU Docket No. 19-59, Public Notice, 35 FCC Rcd 2015 (OEA 2020); Winning Bidders Announced for Auction of 28 GHz Upper Microwave Flexible Use Service Licenses (Auction 101), AU Docket No. 18-85, Public Notice, 34 FCC Rcd 4279 (OEA 2019); Auction of 24 GHz Upper Microwave Flexible Use Service Licenses Closes; Winning Bidders Announced for Auction 102, AU Docket No. 18-85, Public Notice, 34 FCC Rcd 4294 (OEA 2019).

Flexibility in terms of use and secondary-market transactions will tend to promote productive use of spectrum in a way that relying on the Commission to predict the future use will not.

The success of FCC spectrum policy in the future depends on parties' ability to rely on Commission decisions. Reversing course on protections promised to UMFUS licensees without alternative protections or compensation would set a precedent of unreliability such that bidders in future auctions will have to account for the possibility that the FCC might change its mind and lower the protections they are buying as well. This uncertainty would reduce bids and dampen the incentive to make long-term investments in spectrum covered by licenses. That outcome would be contrary to the Commission's goal of more intensive use of these bands and others.

THE COMMISSION SHOULD ENACT POLICIES THAT INCREASE THE PRODUCTIVITY OF UMFUS BANDS WHILE PRESERVING THE RIGHTS PURCHASED BY LICENSEES

The preservation of UMFUS licensees' rights does not entail that the Commission should make no changes to the policies governing the UMFUS bands. Rather, the Commission should uphold the purpose of the restrictions on satellite operations in UMFUS bands without necessarily sticking exactly to the restrictions as currently written. The purpose of restricting satellite deployment in UMFUS bands is to prevent harmful interference to mobile operators. The NPRM's proposals could be tailored to ensure they enable more intensive use of these bands while maintaining this policy objective and sustaining licensees' rights.

First, the NPRM's proposal to permit negotiation and bargaining for interference protection should be part of any reform of these bands.[3] The Commission should vest all protection criteria as rights carried by UMFUS licenses, not in Commission rules. This change would permit private parties to rearrange rights as markets and technology develop, rather than setting rigid rules that only the Commission can alter.

The Commission should freely allow, and not second-guess, private agreements. It should not require any additional process (above and beyond that required for normal earth station deployment) for an earth station deployed pursuant to such an agreement. The Commission should take the UMFUS licensee's consent as sufficient evidence that interference issues are resolved or covered by a private contract.

Second, and in addition to permitting bargaining, the Commission could create a light licensing framework, or automated interference analysis, but in a more tailored manner than that proposed in the NPRM.[4] Rather than turning already-licensed bands into pure first-come-first-served, the light-licensing framework should insulate current licensees from the costs of coordination in the event of conflicts regardless of when they occur.[5] Under this approach, satellite operators and UMFUS licensees could deploy immediately in these bands notwithstanding § 25.136 requirements, but if an UMFUS licensee sought a deployment that would conflict with a satellite deployment, the satellite operator would bear the cost of the coordination to prevent harmful interference. In other words, the later UMFUS deployment would be legally treated as though it were deployed before the conflicting satellite deployment. Consistent with a general light licensing framework, the

[3] NPRM at paras. 18-20.

[4] NPRM at para. 42.

[5] *Ibid.*

party with the burden to coordinate should be allowed flexibility to resolve conflicts at the lowest total cost. For example, the satellite operator could alter its own deployment or pay the UMFUS licensee to modify its system as long as the result is no harmful interference to the UMFUS licensee or the UMFUS licensee's consent. The Commission should be able to arbitrate in the event of bad faith deployment or disputes over the accommodation process by either party.

This approach would retain the rights to UMFUS licensees to deploy pursuant to their licenses without fear of harmful interference, and the prospect of bearing the costs of conflicts would incentivize satellite operators to deploy in areas less likely to result in costly conflicts. The main difference from the status quo would be that the real-world interference landscape would dictate deployments and usage rights, rather than *a priori* Commission rules which may overprotect UMFUS licensees today or block more productive, bargained-for arrangements.

The Commission could, consistent with the above framework, sunset some or all of UMFUS licensee's priority rights after a period of time sufficient to assuage reliance concerns, perhaps the original term of the license, and default to a straightforward first-in-time prioritization within a light licensing framework.

ANY LIGHT-LICENSING FRAMEWORK WOULD OBVIATE THE NEED FOR BUILDOUT REQUIREMENTS

The Commission should eliminate buildout requirements from any license that becomes subject to light licensing. Buildout requirements are a blunt instrument to prevent anticompetitive spectrum warehousing in which a party buys a license only to prevent its use by competitors. This concern is likely overstated in many cases since there may be many reasons not to deploy at a given time that do not overwhelm the benefits of keeping the rights in private, profit-seeking hands as opposed to a reshuffle of the rights by the Commission.[6] Indeed, secondary markets impose high opportunity costs on those who hold rights that are more valuable in others' hands. The case for buildout requirements is even weaker in the case of light licensing since it allows some or all parties to deploy in the absence of deployment by the primary licensee, thus undermining the viability of anticompetitive warehousing.

CONCLUSION

The Commission is right to seek regulatory changes that would facilitate greater flexibility and thus more intensive use of upper microwave spectrum. The NPRM's proposals should be tailored to maximize parties' flexibility without pulling the rug out from under parties that have paid for protection from harmful interference. Thank you for your consideration.

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[6] *See*, Comments of ITIF, "Partitioning, Disaggregation, and Leasing of Spectrum," (WT Docket No. 19-38, February 28, 2025), 5-6, https://www2.itif.org/2022-FCC-ECIP-comments.pdf.