

March 24, 2021

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

The Honorable Gina Raimondo
Secretary
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

Mr. Brian Deese
Director
National Economic Council
Eisenhower Executive Office Building
Washington, D.C. 20502

Re: The Federal Communications Commission's Bipartisan 5.9 GHz Order

Dear Secretary Buttigieg, Secretary Raimondo, and Director Deese:

The International Center for Law & Economics, New America's Open Technology Institute, Public Knowledge and the R Street Institute represent organizations that take contrary positions on many policy issues. But we all agree that the Federal Communications Commission's bipartisan compromise decision to open the 5.9 GHz band to both automotive and broadband technologies achieved the right balance. We therefore write to respond to a March 11, 2021 letter from the Intelligent Transportation Society of America (ITS America) and the American Association of State Highway and Transportation Officials (AASHTO).¹ This letter argues that you should intervene in an attempt to overrule the considered decision of an independent regulatory agency, without revealing key facts about the band. The truth is that the automotive industry was granted access to this band more than twenty years ago and has still failed to produce any real-world safety benefits—and that the FCC's well-supported and bipartisan decision will both support crash-avoidance advances and expand broadband at a time when Americans need it more than ever. We urge you not to undermine the FCC's important decision as ITS America and AASHTO ask you to do.

On November 18, 2020, the Federal Communications Commission (FCC) adopted a unanimous and bipartisan 5.9 GHz Order designating (1) 45 megahertz of the 5.9 GHz band for

¹ Letter from Shailen Bhatt, President & CEO, ITS America, and Jim Tymon, Executive Director, AASHTO, to the Honorable Pete Buttigieg, Secretary, U.S. Department of Transportation, the Honorable Gina Raimondo, Secretary, U.S. Department of Commerce, and Mr. Brian Deese, Director, National Economic Council (Mar. 11, 2021), *available at* <https://itsa.org/wp-content/uploads/2021/03/ITSA-AASHTO-V2X-Letter-March-11.pdf>.

indoor Wi-Fi and other unlicensed broadband technologies and (2) 30 megahertz for automotive safety technologies.² Our organizations believe that the FCC's compromise approach was right for strengthening the Wi-Fi connections Americans rely on and for supporting the innovation in automotive technologies needed to finally address the failure of the FCC's previous ITS policy.

The FCC's 5.9 GHz Order recognized the enormous contributions Wi-Fi makes to Americans' everyday lives and to the Nation's economy. Demand for Wi-Fi has been increasing rapidly for years, and recent research published by the Wi-Fi Alliance has found that Wi-Fi creates nearly \$1 trillion in economic value annually in the United States today.³ The COVID-19 pandemic has only magnified the importance of Wi-Fi to Americans working, attending school, completing homework assignments, attending telehealth visits, connecting with family and friends, and more via their broadband internet connections. Even before the FCC adopted its final order in November, it granted special temporary access to the lower 45 megahertz of the 5.9 GHz band to 100 wireless internet service providers, who used it to immediately expand capacity for customers in dozens of rural areas across the country using existing devices.

Because of Wi-Fi's enormous success, however, the spectrum bands commonly used today are overburdened. As Americans continue to rely increasingly on Wi-Fi to connect more and more devices to the internet, the FCC must seize opportunities to make more spectrum available.

The FCC began to study the 5.9 GHz band for Wi-Fi and other unlicensed applications in 2013. In 2019, in a notice of proposed rulemaking, the Commission correctly recognized that even though the FCC had set aside the full 5.9 GHz band *over twenty years ago* in 1999 for a particular automotive safety technology called Dedicated Short Range Communications (or DSRC), that technology had "not lived up to its promise, ... leaving valuable mid-band spectrum largely fallow."⁴ Today, there is no use of the band at all in the vast majority of the country, and there is not even one automobile model currently built with DSRC. In recognition of this failure, the FCC proposed to split the band so that unlicensed technologies like Wi-Fi could operate in the lower 45 megahertz of the band, and a new automotive communications technology called C-V2X could operate in the top 30 megahertz of the band. It noted that the 5.9 GHz band is adjacent to the most widely-used Wi-Fi band in the United States and that adding those 45 megahertz would enable the use of wider Wi-Fi channels needed to make more efficient use of the spectrum and to support next-generation broadband applications.

Particularly with the emergence of C-V2X, preferred by many in the automotive industry, the Commission believed that a compromise giving both Wi-Fi and C-V2X the ability to operate would finally make efficient and valuable use of the 5.9 GHz band. The Commission received extensive comments over many years from Wi-Fi advocates and automotive interests, and met repeatedly with interested parties. It also considered multiple rounds of input from the National Telecommunications and Information Administration and the U.S. Department of Transportation

² See *Use of the 5.850-5.925 GHz Band*, First Report and Order, Further Notice of Proposed Rulemaking, and Order of Proposed Modification, 35 FCC Rcd. 13440 (2020) (5.9 GHz Order).

³ See <https://www.wi-fi.org/news-events/newsroom/wi-fi-global-economic-value-to-reach-5-trillion-in-2025>.

⁴ *Use of the 5.850-5.925 GHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd. 12603, ¶ 18 (2019).

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on behalf of private automotive companies and states, even though this band is not available for Department of Transportation federal use. In 2020, after many years of consideration, the Commission finally released the 5.9 GHz Order adopting the compromise proposal. Commissioners from both sides of the political aisle voted unanimously in favor of the 5.9 GHz Order, following years of bipartisan effort.

Despite this open and fair proceeding by an independent regulatory agency acting within its area of expertise, ITS America and AASHTO now ask you to work to overturn the FCC's unanimous judgment. They argue, just as they have before the FCC again and again, that automotive communications technologies are poised to revolutionize automotive safety, if only the FCC would get out of the way and leave them the full 75 megahertz of the 5.9 GHz band instead of the top 30 megahertz. ITS America and its members made the same promises *over twenty years ago* about DSRC's just-around-the-corner ability to improve vehicle safety when they successfully convinced the FCC to grant them the unusual and ill-fated subsidy of free, exclusive spectrum. They had two decades and billions of dollars in taxpayer-subsidized grants and investments, but failed to deploy DSRC widely in commercial vehicles. As a result, the only current DSRC uses of the band are sparse pilot projects for applications that need far less than the full 75 megahertz—not the ubiquitous deployments along roadways and in vehicles that would be necessary for DSRC to deliver on its promises. The FCC was right to recognize that there is a more efficient way to make use of the 5.9 GHz band for the benefit of Americans, while still leaving more than enough spectrum for the automotive industry to provide the safety applications they promised decades ago.

The FCC gave ITS America and AASHTO a full and fair hearing. These organizations were vocal participants in the FCC's 5.9 GHz rulemaking process. They filed comments as far back as 2013 and presented their views in meetings with the FCC's expert engineers many times over the course of the rulemaking. After years of careful consideration, the FCC concluded that there is room enough in the 5.9 GHz band for the future of Wi-Fi and for C-V2X, the future of automotive communications according to many industry stakeholders.

For ITS America and AASHTO now to ask the Administration to intervene with Congress in an effort to overrule the technical analysis and unanimous decision of an independent regulator, after 20 years of illusory promises, is nothing short of breathtaking. The country cannot afford for the Administration or Congress to fall prey to another generation of smoke and mirrors. We urge you to decline their invitation to undermine the FCC's independence and its careful technical judgment.

Sincerely,

International Center for Law & Economics
New America's Open Technology Institute
Public Knowledge
R Street Institute