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January 2, 2019

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: *Notice of Ex Parte Communication*  
GN Docket No. 18-122

Dear Ms. Dortch:

Per FCC Rule 1.1206, this letter provides notice that on January 2, 2019, Preston Padden, Head of Advocacy and Government Relations for the C-Band Alliance, sent the attached email to: Chairman Ajit Pai; Commissioner Michael O’Rielly; Commissioner Brendan Carr; Commissioner Jessica Rosenworcel; Donald Stockdale, Bureau Chief, Wireless Telecommunications Bureau; Tom Sullivan, Bureau Chief, International Bureau; Julius Knapp, Chief, Office of Engineering and Technology; Matthew Berry, FCC Chief of Staff; Nicholas Degani, senior counsel to Chairman Pai; Rachael Bender, legal advisor to Chairman Pai; Erin McGrath, legal advisor to Commissioner O’Rielly; Will Adams, legal advisor to Commissioner Carr; and Umair Javed, legal advisor to Commissioner Rosenworcel.

The email emphasizes that contrary to the claims of Comcast, Charter, and others, ample Commission precedent supports allowing secondary market transactions to drive spectrum to its highest and best use. Here, the C-Band Alliance plan provides the only efficient mechanism to make substantial C-Band spectrum available to wireless carriers quickly to drive 5G deployment, including in rural areas, while fully protecting existing C-band subscribers.

Please contact the undersigned with any questions regarding this letter.

Respectfully submitted,

/s/ Jennifer D. Hindin  
Jennifer D. Hindin  
*Counsel for the C-Band Alliance*

Attachment

**From:** PRESTON PADDEN <[ppadden@me.com](mailto:ppadden@me.com)>

**Subject: Secondary Market Precedents**

**Date:** January 2, 2019 at 12:23:47 PM EST

**To:** Ajit Pai <[ajit.pai@fcc.gov](mailto:ajit.pai@fcc.gov)>, Mike O'Rielly <[Mike.ORielly@fcc.gov](mailto:Mike.ORielly@fcc.gov)>, Brendan Carr <[Brendan.Carr@FCC.gov](mailto:Brendan.Carr@FCC.gov)>, Jessica Rosenworcel <[Jessica.Rosenworcel@fcc.gov](mailto:Jessica.Rosenworcel@fcc.gov)>, Donald Stockdale <[donald.stockdale@fcc.gov](mailto:donald.stockdale@fcc.gov)>, Julius Knapp <[Julius.Knapp@FCC.gov](mailto:Julius.Knapp@FCC.gov)>, Thomas Sullivan <[Thomas.Sullivan@fcc.gov](mailto:Thomas.Sullivan@fcc.gov)>

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A copy of this e-mail is being filed today in GN Docket No. 18-122.

The record in the C-band proceeding (GN Docket No.18-122) contains criticisms of the C-Band Alliance (“CBA”) plan by Comcast, Charter Communications, and others. These parties allege or suggest that the CBA’s plan to repurpose C-band spectrum through secondary market transactions is improper and/or a departure from Commission precedent. In fact, as the examples below illustrate, the CBA proposal follows a long line of established precedent, including FCC-approved secondary market agreements in which Comcast’s and Charter’s predecessors in interest reaped substantial private sector proceeds.

Frequently, the Commission grants additional flexibility or new flexible use rights to incumbents, who then are able to use those expanded rights and/or conduct secondary market transactions to convey those rights. These private secondary market mechanisms, approved by the Commission, are designed to direct the spectrum to its highest and best use as fast as possible and without the risk of litigation. In each case, the Commission could have made different decisions but ultimately concluded that the public interest was best served by allowing the private market to function. Here, the CBA proposal seeks a much narrower expansion of its members’ rights in order to convey clearing rights through secondary market transactions, enabling the fastest possible repurposing of the spectrum for terrestrial 5G use.

Below are some of the many examples where the Commission has granted flexible rights to licensees:

- In 2012, the Commission granted DISH approval to acquire control of the satellite licenses for TerreStar-1 and DBSD G1 while there was a pending rulemaking to add AWS-4 service rules to the band (which would make the rights much more valuable). Subsequently, the FCC granted AWS-4 terrestrial use authority to the incumbent 2 GHz Mobile Satellite Service (“MSS”) licensees,<sup>1</sup> while acknowledging that doing so would undoubtedly result in an increase in value of those licensees, particularly for DISH (which had recently acquired TerreStar and DBSD satellite licenses).<sup>2</sup>

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<sup>1</sup> *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, et al.*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102 (2012).

<sup>2</sup> *See Applications for consent to assign/transfer control of licenses and authorizations of New DBSD Debtor-in-Possession and TerreStar Debtor-in-Possession*, 27 FCC Rcd 2250 (2012).

- In 2016, when the Commission created the new upper microwave flexible use service (“UMFUS”) allocation for licenses in the 28 GHz and 39 GHz bands, the Commission extended those mobile rights to the incumbents – even while acknowledging the potential windfall those licensees would receive.<sup>3</sup> The Commission reasoned, “awarding mobile rights to incumbent licensees could be viewed as a windfall to those licensees . . . [but] the benefits of expediting service and facilitating the coordination of fixed and mobile service outweigh any potential disadvantages of granting mobile rights to incumbents.”<sup>4</sup> The Commission has now granted UMFUS rights in the 24 GHz, 28 GHz, 37 GHz, 39 GHz, and 47 GHz bands.<sup>5</sup>
- In 2018, the Commission granted Verizon’s application to acquire 28 GHz, 29 GHz, 31 GHz, and 39 GHz licenses from Straight Path – specifically recognizing that the grant would result in the expeditious use of the spectrum for 5G.<sup>6</sup> Likewise in 2017, the Commission granted Verizon’s application to acquire 28 and 39 GHz licenses from XO Holdings, again recognizing the public benefit of expediting access to 5G.<sup>7</sup> Also in 2018, AT&T acquired 24 GHz and 39 GHz licenses from FiberTower.<sup>8</sup> In each case, some or all of the transferred licenses had been granted flexible use rights in the previously adopted *Spectrum Frontiers* proceeding.
- In 2004, the Commission granted flexible use rights to the incumbents and new users of the Educational Broadband Service and the Broadband Radio Service; in turn, these licensees were entitled to use this spectrum for mobile broadband (often with Sprint).<sup>9</sup>
- In 2012 the FCC approved the private sale of AWS spectrum from a consortium of cable companies called Spectrum Co (63% owned by Comcast) to Verizon.<sup>10</sup> In approving this multi-billion transaction, the Commission found no violation of its anti-trafficking rules<sup>11</sup>

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<sup>3</sup> See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Report and Order and Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016).

<sup>4</sup> *Id.* at 8048 ¶87.

<sup>5</sup> See *id.*; *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, Second Report and Order, Further Notice of Proposed Rulemaking, Memorandum Opinion and Order, 32 FCC Rcd 10988, 11002 ¶41 (2017) (converting existing 24 GHz right to new UMFUS rights).

<sup>6</sup> *Application of Verizon Communications Inc. and Straight Path Communications, Inc. For Consent to Transfer Control of Local Multipoint Distribution Service, 39 GHz, Common Carrier Point-to-Point Microwave, and 3650-3700 MHz Service Licenses*, Memorandum Opinion and Order, 33 FCC Rcd 188 (WTB 2018).

<sup>7</sup> *Application of Cellco Partnership d/b/a Verizon Wireless and XO Holdings For Consent to Transfer Control of Local Multipoint Distribution Service and 39 GHz Licenses*, Memorandum Opinion and Order, 32 FCC Rcd 10125 (WTB 2017).

<sup>8</sup> *Application of AT&T Mobility Spectrum LLC and FiberTower Corporation For Consent to Transfer Control of 39 GHz Licenses*, Memorandum Opinion and Order, 33 FCC Rcd 1251 (WTB 2018).

<sup>9</sup> See *Amendment to Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 19 FCC Rcd 14165 (2004). See also *Applications of SOFTBANK CORP., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation, et al.*, Memorandum Opinion and Order, 28 FCC Rcd 9642 (WTB 2013).

<sup>10</sup> *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd 10698 (2012).

<sup>11</sup> *Id.* at 10715 ¶¶44-46.

and once again emphasized that these deals would “result in an expeditious transfer of valuable spectrum into the hands of multiple national service providers that will put it to use in providing the latest generation mobile broadband services.”<sup>12</sup>

The CBA’s market-based approach is the only plan that fully protects fixed satellite service (“FSS”) incumbent operations while freeing up a substantial amount of spectrum – 200 megahertz of the lower C-band including a 20 megahertz guard band – for terrestrial 5G operations. Under this proposal, SES and Intelsat intend to order 8 American-made satellites to ensure there is sufficient on-orbit satellite capacity in the remaining portion of the band to guarantee that incumbent FSS customers can maintain their operations. And the CBA proposal would complete the repurposing of this spectrum for terrestrial mobile services within 18-36 months, by far the fastest approach.<sup>13</sup>

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<sup>12</sup> *Id.* at 10700 ¶6.

<sup>13</sup> *Ex Parte* Letter of the C-Band Alliance, GN Docket No. 18-122 (filed Dec. 19, 2018).