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January 30, 2019

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Ex Parte Notification*

GN Docket No. 18-122, *Expanding Flexible Use of the 3.7 GHz to 4.2 GHz Band*

Dear Ms. Dortch:

The C-Band Alliance continues to invent reasons why the Commission should adopt its proposal that would enrich its members, who would unilaterally decide how and to whom to sell assets they do not own. Its January 2, 2019 filing in the above-referenced proceeding, in which it claims that Commission precedent supports its plan, is no different.^{1/} But the Commission precedent to which the C-Band Alliance cites does just the opposite – it demonstrates why the C-Band Alliance’s proposal is contrary to the public interest, and provides further support for an approach incorporating a public incentive auction.

The Commission Has Not Granted Expanded Rights so that They May Be Immediately Sold

Contrary to the C-Band Alliance’s assertions, the Commission has not previously granted new or expanded rights to incumbent licensees with the intention that those rights would be immediately sold, and it should not do so now. Instead, in cases in which incumbent licensees were granted additional rights, the Commission granted these rights so that the spectrum at issue could be used *by the incumbent licensees* to deploy new or additional services. Nowhere was that more clear than in the AWS-4 band – the first example cited by the C-Band Alliance. There, the Commission first considered the issue of whether a terrestrial allocation should be added to what became the AWS-4 band, previously primarily designated for satellite use.^{2/} Then, the International Bureau considered applications to approve the transfer of the satellite service authorizations from New DBSD Satellite Service G.P. and TerreStar License, Inc. to DISH, *and*

^{1/} C-Band Alliance *Ex Parte*, GN Docket No. 18-122 (filed Jan. 2, 2019).

^{2/} See *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Report and Order, 26 FCC Red. 5710 (2011).

to expand DISH's rights to use the spectrum for terrestrial use.^{3/} But the International Bureau declined to take the latter action, just approving the transfer.^{4/} Only afterwards did the Commission separately consider whether to grant the transferee DISH terrestrial authority.^{5/} In fact, in the rulemaking proceeding adopting service rules, the Commission evaluated whether the satellite licensee – DISH – should even have terrestrial rights (or whether they should be licensed independently).^{6/} There was no guarantee that DISH would ever get terrestrial rights. And when the Commission provided DISH with those terrestrial rights, it certainly was not with the expectation that they would be sold.^{7/} To the contrary, in asserting that the Commission should make changes to its rules for the AWS-4 band, DISH argued that it would become a “disruptive competitor in the wireless market.”^{8/}

Similarly, in the *Spectrum Frontiers* proceeding, the Commission granted terrestrial mobile rights to existing licensees in the 28 GHz and 39 GHz bands in order to allow those same licensees to deploy mobile service and to allow them flexibility in how they designed their

^{3/} See *ICO Global Communications (Holdings) Limited; DBSD North America, Inc. Debtor-in-Possession; New DBSD Satellite Services G.P. Debtor-in-Possession, Transferors, and DISH Network Corporation, Transferee, Consolidated Application for Authority to Transfer Control*, IBFS File Nos. SAT-T/C-20110408-00071, SES-T/C-20110408-00424 and -00425 (filed Apr. 8, 2011); *TerreStar Networks Inc., Debtor-in-Possession; and TerreStar License Inc., Debtor-in-Possession, Transferors, and DISH Network Corporation and Gamma Acquisition L.L.c., Transferees, Consolidated Application for Transfer of Authorizations*, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279 (filed Aug. 22, 2011).

^{4/} *DBSD North America, Inc., Debtor-in-Possession; New DBSD Satellite Services G.P., Debtor-in-Possession; Pendrell Corporation, Transferor; and TerreStar License Inc., Debtor-in-Possession; Assignor, and DISH Network Corporation, Transferee; and Gamma Acquisition L.L.C.; Assignee; Applications for Consent to Assign/Transfer Control of Licenses and Authorizations of New DBSD Satellite Services G.P., Debtor-in-Possession and TerreStar License Inc., Debtor-in-Possession*, Order, 27 FCC Rcd. 2250 (IB 2012).

^{5/} See *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).

^{6/} See *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Notice of Proposed Rulemaking and Notice of Inquiry, 27 FCC Rcd. 3561, ¶ 72 (2012).

^{7/} See *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, ¶ 177 (2012). The Commission also stated that assigning the AWS-4 spectrum rights to the existing 2 GHz Mobile Satellite Service (“MSS”) licensees (*i.e.*, DISH) was further justified because spectrum sharing between separately-licensed MSS and terrestrial operators was not yet possible in the band. *Id.* ¶ 183. But, unlike the proposals for the 3.7-4.2 GHz band, satellite operations in the AWS-4 spectrum were not relocated. Since satellite operations in the 3.7-4.2 GHz band will be cleared from spectrum made available for terrestrial mobile use – eliminating sharing concerns – this consideration does not weigh in favor of granting existing licensees expanded rights.

^{8/} Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 10-142, *et al.*, at 1 (filed Nov. 8, 2012).

systems.^{9/} In fact, one of the bases of the Commission’s decision in those cases was its contemplation, when it first established rules for the 28 GHz and 39 GHz bands, that licensees would have the opportunity to engage in mobile operations if the then-existing technical issues could be resolved.^{10/} The Commission granted mobile rights to incumbents in the 24 GHz band for similar reasons.^{11/} In this case, the members of the C-Band Alliance have no plans to put the 3.7-4.2 GHz band to use for terrestrial services. Instead, they seek to enlist the Commission’s assistance for one reason – to sell spectrum that they acquired for free for potentially billions of dollars – an enormous transfer of wealth away from the public for an amount of spectrum on which the C-Band Alliance will unilaterally decide.

The Commission’s approval of the sale of AWS-1 spectrum by a consortium of cable operators is wholly unrelated to the C-Band Alliance’s proposal. In that case, spectrum had earlier been re-designated for use by terrestrial mobile systems. Then, the spectrum was auctioned to a variety of entities, including cable operators. But there was never any relationship between the previous holders of spectrum rights – generally microwave licensees – and auction winners. And, as in the cases above, the rights at issue were not acquired by the cable companies for the purpose of being sold. The fact that cable operators, after acquiring spectrum at auction, determined not to proceed with business plans that included terrestrial wireless spectrum and therefore sold the licenses they acquired at auction is unremarkable. In fact, the Commission explicitly found that there was no evidence that the cable companies had “obtained the AWS-1 licenses for the principal purpose of trafficking in those authorizations.”^{12/}

^{9/} See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd. 8014, ¶¶ 37, 83-87 (2016). The Commission was also concerned that separating fixed and mobile rights would complicate coordination and lead to disputes that would make providing service more difficult for all licensees – an outcome that would not be an issue here since satellite users will be relocated from spectrum made available for terrestrial mobile use. See *id.* ¶¶ 38, 86.

^{10/} See *id.* ¶ 37 (noting that the Commission expected “that it would expand the [28 GHz] LMDS authorization for Fixed Service to include Mobile Service if proposed and supported by the resulting record” and that the “technology of the time did not enable the use of these frequencies for advanced mobile services”); *id.* ¶ 83 (“When the Commission established rules for the 39 GHz band, it contemplated that 39 GHz licensees would have the opportunity to engage in mobile operations if the associated technical issues could be resolved.”).

^{11/} See *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services*, Second Report and Order Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd. 10988, ¶ 42 (2017) (stating that converting existing licenses would “allow current licensees to focus on growing and transitioning their networks in line with new and developing industry standards”).

^{12/} *Applications of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo LLC and Cox TMI, LLC For Consent To Assign AWS-1 Licenses, et al.*, Memorandum Opinion and Order and Declaratory Ruling, 27 FCC Rcd. 10698, ¶ 45 (2012).

Instead of Supporting the C-Band Alliance Approach, the Precedent It Cites Shows that an Auction Would Best Serve the Public Interest

As commenters in this proceeding have explained,^{13/} an open and transparent auction process will allow market forces to determine the true value of the C-Band spectrum for terrestrial mobile services and, based on that value, how much current licensees would relinquish at those prices. This approach is consistent with the Communications Act and would ensure that the spectrum is put to its highest and most efficient use in a manner that fosters competition.

As detailed above, when the Commission added a terrestrial allocation to a spectrum band, it intended the incumbent licensee to take advantage of that added authorization. When the Commission's intentions were not realized, the public interest suffered. Indeed, the cases cited by the C-Band Alliance demonstrate why private transactions that follow the addition of terrestrial authority to existing licenses generate fewer public benefits than a Commission auction. For instance, despite the Commission's intention that the license conversions in the 28 GHz and 39 GHz bands would allow existing licensees to deploy mobile services, these license conversions instead resulted in the immediate flip of the spectrum to Verizon and AT&T,^{14/} generating enormous profits for the incumbents but preventing others from accessing the spectrum. An auction of the spectrum, however, could have promoted competition and encouraged innovation by a wider range of entities. Likewise, the conversion of the AWS-4 spectrum for the benefit of the incumbent has resulted in no use of the spectrum by DISH to date. DISH's current plan for build out would use only a tiny portion of its available AWS-4 spectrum capacity, leaving the remainder – almost all of its AWS-4 spectrum – fallow.^{15/} If this spectrum had been auctioned, it likely would have been put to much more productive use by wireless carriers. Instead, DISH has warehoused this spectrum for years.

To protect the public interest and maximize the amount of spectrum that will be made available for wireless mobile broadband, the Commission should reject the C-Band Alliance's proposal

^{13/} See, e.g., Comments of the T-Mobile USA, Inc., GN Docket No. 18-122, *et al.*, at 2-5 (filed Oct. 29, 2018); Comments of United States Cellular Corporation, GN Docket No.18-122, at 5 (filed Oct. 29, 2018).

^{14/} See *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); *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); *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).

^{15/} See Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH Network Corporation, to Donald Stockdale, Chief, Wireless Telecommunications Bureau, ULS Lead Call Signs T070272001, T060430001, WQJY944, and WQTX200 (filed Sept. 21, 2018).

and adopt an approach to clearing the 3.7-4.2 GHz band that incorporates an incentive auction, as is supported by numerous parties in this proceeding.^{16/}

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey
Vice President, Government Affairs
Technology and Engineering Policy

^{16/} See, e.g., Comments of the T-Mobile USA, Inc., GN Docket No. 18-122, *et al.*, at 2-5 (filed Oct. 29, 2018); Comments of the Public Interest Spectrum Coalition, GN Docket No. 18-122, at 26 (filed Oct. 29, 2018); Comments of United States Cellular Corporation, GN Docket No. 18-122, at 4-5 (filed Oct. 29, 2018); Comments of the American Cable Association, GN Docket No. 18-122, *et al.*, at 15-16 (filed Oct. 29, 2018).