October 16, 2020

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re:  Ex Parte Communication
     MVDDS 5G Coalition Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7
     GHz Band for Two-Way Mobile Broadband Service, RM-11768

Dear Ms. Dortch,

AT&T Services, Inc., on behalf of the subsidiaries and affiliates of AT&T Inc. (collectively, “AT&T”), hereby submits this ex parte response to the submissions of DISH Network LLC (“DISH”)1 and RS Access, LLC (“RS Access”)2 in the above-captioned proceeding. Both DISH and RS Access restate their unproven assertions that 5G services and incumbent Direct Broadcast Satellite (“DBS”) services can coexist in the same spectrum and that the Commission should open a rulemaking proceeding to modify and convert one-way MVDDS licenses accordingly. Not only have DISH and RS Access failed to make a technical case for coexistence, their submissions lay bare the fact that this proceeding is primarily an effort by terrestrial licensees to enhance the value of the licenses – licenses they have minimally invested in and may not have even satisfactorily built out – at the expense of their fellow incumbents and American taxpayers.

DISH and RS Access Offer No New Evidence to Cure the Coalition’s Highly Flawed Technical Analysis

It is well-established that although the one-way services currently permitted under MVDDS licenses may coexist with DBS (subject to extensive pre-deployment coordination), two-way services would create an untenable interference environment. It is for this reason that the Commission restricted MVDDS to low-power, one-way, fixed use in the first place. In support of its Petition, the Coalition submitted two technical studies that purported to

demonstrate the compatibility of two-way terrestrial services and DBS services in the same spectrum. As AT&T explained two years ago, however, these studies made inaccurate baseline assumptions regarding the nature of deployments and relied upon cherry-picked use cases that are not representative of real-world deployments. Rather than substantively rebut these claims or offer more realistic coexistence scenarios, the Coalition perplexingly asserted that it deliberately cherry-picked those use cases to demonstrate that two-way services would only work “through careful site selection” which would seem to undermine the Coalition’s other arguments regarding the public benefits of their proposed service.

Neither the Coalition, DISH, RS Access, nor any other MVDDS licensee has substantively rebutted AT&T’s findings regarding the interference threat to DBS posed by two-way co-channel terrestrial services. In its most recent ex parte submission, RS Access simply recites a list of conclusory statements previously made by other parties regarding the coexistence potential of DBS and terrestrial two-way services. DISH’s additional arguments, meanwhile, are unavailing. First, DISH suggests that compatibility is aided by the fact that DBS is a fixed service. This, however, ignores the fact that millions of DBS receivers are deployed ubiquitously throughout the United States, with some of them in fact being installed on vehicles and effectively mobile. Therefore, comparisons to fixed service environments with a small, stationary number of earth stations are inappropriate. Further, in these fixed service environments the exact geographic coordinates of each earth station are known, and licensees must maintain accurate information in public records regarding these coordinates. DBS receivers, however, are tied to subscriber addresses, not specific coordinates, and subscribers have the right to move their dish from one location to another on their property without notifying anyone. This means, in turn, that DBS operators do not have access to granular location data for their receive terminal installations.

DISH also makes no effort to explain how “geographic separation” can result in robust terrestrial service that avoids interference to DBS when DBS receivers are – or can be – everywhere. Indeed, spaces where individuals are likely to watch DBS television services – their homes, hotels, sports bars, etc. – are the same spaces where consumers are also most likely to use their mobile devices. DISH continues to ignore that not all DBS receivers are on rooftops – many are mounted on the side of buildings (below the roof line), balconies, vehicles, and on the ground – rendering DISH’s conclusions that there exist broad white spaces where terrestrial

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5 RS Access September 2020 Letter at 1-3.
6 DISH September 2020 Letter at 2.
7 Id. at 3 (“The Coalition’s two technical studies have demonstrated that geographic separation, absorption in the clutter, transmitter power constraints on MVDDS operations, and other siting parameters for 5G base stations can ensure that interference to DBS users would rarely, if ever, occur.”).
mobile services can be deployed on a non-interfering basis fundamentally flawed. And if one takes at face value the Coalition’s assertion that “careful site selection” is “one of the foundations of the Coalition’s proposal,” the Coalition’s proposal falls apart when one considers that the sites they’d need to coordinate with represent a constantly-moving target.

The Commission’s recent efforts in the C Band proceeding make clear just how unrealistic DISH and RS Access’ assertions regarding coexistence are. In that proceeding, the Commission opted to clear the lower portion of the band for new 5G operations, rather than force a coexistence framework. Not only did the Commission mandate clearing of the lower 300 MHz of that band to accommodate 5G services but, recognizing that 5G services would also impact FSS operations in adjacent bands, also mandated adjacent-channel protection requirements, including a 20 MHz guard band. More recently, the industry has been working for months to develop best practices for how to implement these adjacent-channel protection requirements. Neither DISH nor RS Access offers any acknowledgment of these recent developments, or any explanation of why the interference picture in 12 GHz would be any different, particularly given that there are roughly 1,000 times more earth stations in use in the 12 GHz band than there are in the C Band.

DISH once again insists that it would not pursue the Petition if it thought its DBS business would be harmed, but its answer would likely be different if the Commission were to auction the new mobile spectrum licenses, rather than simply transfer new and valuable spectrum rights to DISH at no cost. Indeed, in the context of AWS-4 it was DISH that insisted that satellite and terrestrial co-channel coexistence is most easily obtained if the same party holds both authorizations. Given that DISH holds a substantial number of MVDDS licenses and appears to have business relationships with some of the other MVDDS incumbents, perhaps it is less concerned about interference to its own DBS services. That, however, is not the same as saying that interference between the services would not occur as a technical matter. It bears noting that in the case of AWS-4, DISH’s solution to the coexistence problem was to shut down

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8 Id. (“[W]idespread small cell deployments, for example, make coexistence with rooftop DBS even easier today…”).
9 Coalition August 2018 Letter at 3.
10 Expanding Flexible Use of the 3.7 to 4.2 GHz Band, Report and Order and Order of Proposed Modification, FCC 20-22, ¶ 22 (2020).
11 Id. at ¶ 31.
12 Comments of DISH Network Corporation, WT Docket No. 12-70, at 4 (May 17, 2012) (“These interference issues can be overcome if (and only if) the MSS and the terrestrial operations are under common control. No two independent operators can succeed in organizing and managing the highly complex coordination process required between the MSS and the terrestrial services at the same time, in the same band, and in the same region. Thus, the Commission correctly proposes that the only way to realize the full potential of the 2 GHz band for terrestrial use while preserving a satellite service is to have the same operator (or affiliated operators) control both the satellite and terrestrial systems.”).
13 As explained further below, licensees Satellite Receivers, Ltd. and MVD Number 53 Partners LLC contracted with a DISH subsidiary to build out their licenses on behalf and broadcast the same content ostensibly broadcast by DISH. See, e.g. ULS File No. 0008780806, at Exhibit 1 (Satellite Receivers, Ltd.); ULS File No. 0008753668, at Exhibit 1 (MVD Number 53 Partners LLC).
its satellite service. That may be DISH’s answer to the potential interference problem, but it is not AT&T’s.

The windfall DISH assumes it would receive – at taxpayers’ expense – makes its apparent indifference to its DBS customers’ fate understandable. If DISH has determined that it is willing to risk sabotaging its DBS service in pursuit of another opportunity, that is of course its prerogative. However, it is not entitled to force its competitors and fellow incumbents to do the same. AT&T opposes efforts by the Coalition to seek new license rights that would harm DBS customers. More households and businesses in the United States receive subscription television service via DBS service than any other platform. Contrary to the conclusory assertions of DISH and RS Access, the allocation of two-way terrestrial services in the 12 GHz band would interfere with video services relied upon by millions of households. It is for these reasons that AT&T opposes the Coalition’s attempt to sacrifice DBS subscribers in favor of a terrestrial service of questionable public value.

The Coalition Proposal Would Harm the Commission’s Efforts to Spur 5G Deployment by Diverting Resources to an Inferior Service

Even if DISH, RS Access, and the other Coalition members were correct in their claim that two-way terrestrial service could be offered in the 12 GHz band without harming DBS, the proposal would harm the Commission’s efforts to spur 5G deployment. Indeed, this proposal is inconsistent with the Commission’s vision for 5G and would be an unhelpful distraction. The Coalition and its members have stated that the proposed service would involve some fixed, low-power base stations in “unique geographic conditions” away from the millions of DBS users sprinkled through virtually every community. The Coalition further suggests that it could deploy base stations in “urban canyons” or other places where satellite services may not reach. More recently, DISH has suggested that terrestrial licensees would be required to “maintain conservative EPFD levels.”

When one considers the ubiquity and mobility of DBS receivers, it becomes obvious that terrestrial operations in the 12 GHz band can adequately protect incumbent DBS services or provide nationwide 5G; it cannot do both. Even if DISH and RS Access were correct that the Coalition’s proposed service can coexist with DBS – which it cannot – such coexistence would involve significant compromises on the terrestrial side that would make conversion of terrestrial MVDDS licenses a wasted effort. The Coalition’s proposal neither protects incumbents nor promotes robust 5G services, yet it would involve significant time and effort by the Commission to implement. If the Commission stands firm in its goal of making the U.S. a leader in 5G, this effort would prove a needless distraction.

AT&T recognizes that even if what the Coalition proposes is not “true” 5G, it would provide MVDDS licenses with more flexibility – and therefore more value – than they currently

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15 Reply Comments of the MVDDS 5G Coalition, RM-11768 (June 23, 2016).
16 DISH September 2020 Letter at 2.
have. The Coalition’s proposal makes little sense as an effort to preserve DBS, or to promote 5G. As an effort to reap a financial windfall from licenses the Coalition members have minimally invested in, however, the proposal makes perfect sense.

The Coalition Proposal Would Harm American Taxpayers by Diverting Billions of Dollars from the U.S. Treasury

Under the Coalition’s proposal, the Commission would create new two-way, flexible use rights in the 12 GHz band and award these new authorizations to MVDDS licensees at no additional cost. In so doing, the Coalition would have the Commission bypass an opportunity to auction this spectrum, likely depriving the U.S. Treasury of billions of dollars in revenue. The Commission historically has not responded kindly to attempts to secure multi-billion-dollar giveaways, and it should not countenance this effort.17

As AT&T has indicated previously, if the Commission wishes for this band to be a 5G band, it needs to do so the right way: the Commission must clear and compensate incumbents, identify alternate spectrum for incumbents, auction terrestrial rights, and permit winning bidders to operate at standard power levels with minimal limitations on the location of base stations. This path would mirror the Commission’s recently adopted framework for the C Band. In that proceeding, the Commission established a framework to incent satellite incumbents in the band to clear the band in a relatively short timeframe and has adopted rules and procedures for an auction of terrestrial licenses later this year.

The Coalition members, however, seek a wholesale conversion of their spectrum (and attendant increase in value) without any requirement that they compete against other interested parties to see who values the spectrum most highly. The Coalition also seeks to exclude other incumbents, incumbents who have co-primary rights and who provide valuable services to tens of millions of citizens and businesses. This fact, combined with the fact the Coalition’s proposed service would not be capable of delivering “true” 5G service, means that grant of the Coalition’s proposal would result in an underutilized band, interference to incumbent satellite services, and a needless windfall to the Coalition members at the expense of taxpayers. The Commission does not take kindly to attempts to achieve multi-billion-dollar windfalls at the expense of American taxpayers, and there is no clearer illustration than the last time DISH attempted to gain a multi-billion-dollar giveaway. Then-Commissioner Pai decried DISH’s effort “to rip off the American people to the tunes of billions of dollars,” stating that “I am determined to do everything in my power to stop it from happening again.”18 If DISH has its way, it will happen again. Such a result would not only unjustly enrich DISH and embarrass the Commission, it would be unlawful, unfair and would make the band useful for neither 5G nor satellite services.

17 The creation of new, two-way flexible use licenses in the DBS band, and the failure to assign the licenses through a system of competitive bidding (opting instead to give them away at no cost to a subset of DBS band incumbents who hold low power broadcast authorizations in common with DBS providers and NGSOs) would also violate the Communications Act. 47 U.S.C. § 309(j).

Finally, AT&T notes that DISH, RS Access, and other small MVDDS license holders are currently in the process of trying to persuade the Commission that their pending buildout showings for their existing MVDDS licenses should be accepted. Their applications have been pending for more than a year. These pending buildout showings reveal that if any service is being provided to end user customers, it is minimal. DISH in particular seems to be going out of its way to ensure that no customers are able to sign up for the service purportedly being offered via its MVDDS spectrum,19 which also casts uncertainty on the buildout showings of two other licensees.20 Other licensees appear to only be offering very limited point-to-point services.21 The Coalition’s members arguably have failed to make a case to keep the low power, one-way point-to-multipoint authorizations they currently hold, much less to be awarded new, valuable flexible use licenses at no charge.

Please contact me with any questions.

Sincerely,

/s/ Michael P. Goggin

Michael P. Goggin

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19 DISH advertises its MVDDS services on a website that is virtually impossible to find if one does not know exactly where to look for it. See [http://dish.com/mvdds](http://dish.com/mvdds). This website cannot be navigated to from the main DISH site, nor does a search for “MVDDS” on DISH’s website produce any hits. Similarly, a Google search for DISH and MVDDS does not produce the site, and the site’s source code appears to include code that would prevent a search engine from indexing the page. Only someone who knew the exact URL – such as a potential customer who decided to casually peruse DISH’s ULS filings – would be able to find it. It is unclear why DISH would go to such lengths to prevent potential customers from learning about its MVDDS services, and one cannot help but wonder whether DISH is, in fact, transmitting on its spectrum if it goes to such lengths to repel potential customers. Further, DISH is charging $2.99 per month for the WeatherNation streaming service that is available for free via WeatherNation’s various apps – not exactly competitive pricing and pricing that would likely serve to discourage potential customers.

20 See note 13, supra.

21 The “safe harbor” guidance offered by the Commission to licensees was premised on the assumption that MVDDS licensees would be providing point-to-multipoint service, and the Commission concluded that “for an MVDDS licensee that chooses to offer point-to-multipoint service, a demonstration of substantial service would consist of actual delivery of service to customers via four separate transmitting locations per million population.” Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, ¶ 177 (2002). However, several MVDDS licensees submitted buildout showings describing what is essentially point-to-point service yet nonetheless arguing that the point-to-multipoint safe harbor applies. See, e.g., ULS File No. 0008753838, at Substantial Service Showing and Substantial Service Amendment. Further, one factor the Commission considers in determining whether a MVDDS licensee meets the substantial service requirement is whether the licensee is providing service “to a significant portion of the population or land area of the licensed area.” 47 C.F.R. § 101.1413(b)(3). However, many of the build showings fall well short in this regard. For example, the entirety of the buildout for call sign WQAR719 (which covers a market overlapping portions of Kansas and Nebraska) is contained within a single building, which houses a motor sports dealer and laser tag gym. See ULS File No. 0008754233.