



October 20, 2020

**VIA ECFS**

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

Re: *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:

WorldVu Satellites Limited, Debtor-in-Possession (“OneWeb”), Kepler Communications (“Kepler”), Space Exploration Technologies Corp. (“SpaceX”), Intelsat License LLC (“Intelsat”), AT&T Services, Inc. (“AT&T”), and SES S.A. (“SES”) (together, the “12 GHz Operators” or “Operators”) jointly submit this opposition to the self-interested efforts of some Multichannel Video Data and Distribution Service licensees and related parties (collectively, the “MVDDS Parties”) to revive interest in a languishing petition for rulemaking to convert the 12.2-12.7 GHz band (the “12 GHz Band”) for two-way, terrestrial mobile operations.<sup>1</sup>

The Petition remains critically flawed, and the MVDDS Parties have failed to resolve the significant stakeholder concerns raised in the extensive record in this proceeding. More specifically, this letter focuses on recent submissions by the MVDDS Parties that are flatly inconsistent with two inescapable conclusions based on the current record: (1) the intensive use of the 12 GHz Band by the Operators cannot successfully coexist with the kind of two-way terrestrial mobile services proposed by the MVDDS Parties; and (2) the rationale underlying the MVDDS Petition—*i.e.*, that the 12 GHz Band is underutilized—remains even *less* compelling today than it was when the Petition was filed 4.5 years ago. The MVDDS Parties have failed to justify—both then and now—any basis for the Commission to initiate a rulemaking proceeding.

Accordingly, the 12 GHz Operators urge the Commission to deny the MVDDS Petition.

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<sup>1</sup> See *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 (filed Apr. 26, 2016) (“MVDDS Petition” or “Petition”).

## **Coexistence Between MVDDS 5G Proposals and Satellite Operations in the 12 GHz Band Is Not Feasible**

As the 12 GHz Operators have consistently highlighted in this proceeding, successful coexistence between the ubiquitous two-way mobile services proposed by the MVDDS Parties and the authorized satellite operations that use the 12 GHz Band to provide vital services to U.S. consumers is not viable. A brief overview of the record with respect to the potential for harmful interference to Direct Broadcast Satellite (“DBS”) and non-geostationary orbit (“NGSO”) fixed-satellite service (“FSS”) operations is summarized below:

- *Impact on DBS.* AT&T has repeatedly explained that adoption of the proposals put forward by the MVDDS Parties would fail to adequately protect DBS operations in the 12 GHz Band, potentially resulting in “an untenable interference environment” for the tens of millions of DBS subscribers receiving programming via the 12 GHz Band.<sup>2</sup> AT&T recently reiterated its opposition to the Petition and the arguments of the MVDDS interests, emphasizing that its analysis of the harmful interference that would result from the introduction of terrestrial, two-way mobile services in the 12 GHz Band remains unchanged.<sup>3</sup>
- *Impact on NGSO FSS.* Similarly, the record demonstrates that two-way, terrestrial mobile operations are fundamentally incompatible with 12 GHz NGSO FSS operations, which are poised to provide transformative connectivity to all parts of the United States—including rural and underserved areas.<sup>4</sup> Both OneWeb and SpaceX have pointed out that NGSO FSS operations cannot coexist with the high-power level, ubiquitous mobile operations the MVDDS Parties propose.<sup>5</sup> The MVDDS Parties themselves concurred with this technical

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<sup>2</sup> See Letter from Michael P. Goggin, AT&T, to Marlene H. Dortch, Secretary, FCC, RM-11768, at 1 (filed Aug. 6, 2020) (“AT&T Letter”). See also Letter from Michael P. Goggin, AT&T, to Marlene H. Dortch, Secretary, FCC, RM-11768 at 1 (filed June 14, 2018) (addressing the “the numerous flawed premises, faulty assumptions, and internal inconsistencies contained in the [MVDDS Coalition’s] technical advocacy”); Reply Statement of AT&T, RM-11768 at 1 (filed June 23, 2016) (disagreeing with the contention that MVDDS and DBS licensees can share the 12 GHz Band “without harmful interference to DBS”).

<sup>3</sup> See AT&T Letter at 2. Similarly, SES provides DBS services from two of its geostationary orbit satellites and has previously noted that the MVDDS Parties have not demonstrated that they will “protect DBS services from harmful interference, as required by Commission rules.” Reply of SES, RM-11768, at 2 (filed June 23, 2016).

<sup>4</sup> For example, Kepler, OneWeb, Space Norway, and SpaceX —four operators authorized in the Commission’s Ku-band processing round initiated in 2016—have collectively deployed almost 1,000 satellites that will provide service utilizing the 12 GHz Band.

<sup>5</sup> See, e.g., Letter from David Goldman, Director of Satellite Policy, SpaceX, to Marlene H. Dortch, Secretary, FCC, RM-11768, at 3 (filed July 22, 2020); Reply of OneWeb, RM-11768, at 2-3, (filed June 23, 2016).

conclusion for years, until recently pivoting to argue that coexistence would be feasible.<sup>6</sup> Notwithstanding this complete about-face by the MVDDS Parties, the record comprehensively demonstrates that “reallocating the 12 GHz spectrum for 5G terrestrial uses will wreak havoc on NGSO FSS operations.”<sup>7</sup>

Thus, on the basis of the technical record alone, the Commission should deny the MVDDS Petition. To move forward based on flawed technical demonstrations that have been extensively debunked, putting widely deployed DBS operations and rapidly proliferating NGSO services at risk of harmful interference, would not constitute the kind of well-reasoned decision making that has been the hallmark of the Commission’s 5G spectrum policy under Chairman Pai. While the MVDDS Parties have recently shifted to demanding a “neutral” NPRM, they have never explained how a proposal to limit satellite operators’ rights in the 12 GHz Band could be neutral. Indeed, these sorts of open-ended proceedings introduce the exact type of regulatory uncertainty that Chairman Pai has often pointed out deter investment.

### **The MVDDS Parties Have Not Justified Their Request for a 12 GHz Rulemaking**

At its core, the MVDDS Petition and submissions by the MVDDS Parties rely on an inherently flawed premise: namely, that the MVDDS Parties should receive a spectrum windfall at the expense of satellite-based, co-primary operations because the 12 GHz Band is “underutilized.” Simply put, any suggestion that the 12 GHz Band today is not being used to deliver critically important services to U.S. consumers is entirely misleading and unsupported by the current record in this proceeding.

The MVDDS Petition touts the potential consumer benefits resulting from the introduction of 5G terrestrial mobile services in the 12 GHz Band, and recent submissions in this proceeding advertise a purported “5G opportunity” and the need for “5G investment and innovation.”<sup>8</sup> What this misguided advocacy fails to acknowledge is that the 12 GHz Band “opportunity” has *already* been seized—just not by the MVDDS Parties, which have consistently failed to provide any meaningful services. Indeed, the most notable developments with respect to current MVDDS licensees involve their attempts to excuse noncompliance with applicable

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<sup>6</sup> Comments of the MVDDS 5G Coalition, RM-11768, Attachment I at 35 (filed June 8, 2016) (“coexistence between MVDDS 5G operations and NGSO FSS operations is not possible without severe operational constraints on MVDDS, NGSO FSS or both services.”); Letter from Alison Minea, DISH Network L.L.C. and SOUTH.COM LLC, to Marlene H. Dortch, Secretary, FCC, RM-11768, at 3 (filed Dec. 2, 2019).

<sup>7</sup> See, Letter from James E. Dunstan, General Counsel, TechFreedom, RM-11768, at 8 (filed Oct. 8, 2020) (“TechFreedom Letter”).

<sup>8</sup> See Letter from Trey Hanbury, Counsel to RS Access, LLC, to Marlene H. Dortch, Secretary, FCC, RM-11768, Attachment at 1, 8 (filed Oct. 25, 2019).

Commission build-out requirements.<sup>9</sup> This is a classic case of spectrum squatting. Having underutilized the spectrum for years, the MVDDS Parties now ask the FCC to reward their bad behavior by providing them with expanded rights that they will undoubtedly monetize—all at the expense of the Operators and their customers.

The 12 GHz Operators and other satellite companies have invested billions of dollars to develop and supply innovative, consumer-oriented video distribution networks and connectivity services (including 4G and evolving 5G applications) in reliance on the existing regulatory framework that has been in place for nearly twenty years. As a result of these investments, satellite technologies are already well-positioned to facilitate a multitude of key applications in the 5G ecosystem in the United States, including the delivery of large video files, enabling industrial IoT-based solutions for the agriculture, mining, and transport logistics sectors, and other services that remain critical during the ongoing global pandemic. These dynamic capabilities stand in stark contrast to the MVDDS Parties, who can only promise such investment and innovation as a speculative future benefit of a potentially arduous, long-term band reallocation process that will put existing and near-term satellite services at risk.<sup>10</sup>

As outlined above, the Operators rely on the 12 GHz Band to supply a vast assortment of vitally important services, including DBS providers distributing video programming to tens of millions of homes and businesses and vertically integrated satellite connectivity networks that the Commission has recognized will play an integral part in closing the Digital Divide.<sup>11</sup> Contrary to the false narrative being perpetuated by the MVDDS Parties, any call to unlock the “5G Opportunity” constitutes a thinly-veiled attempt to end-run the unfavorable record in this proceeding and undercut the massive satellite operator investments and ongoing innovation in favor of purely speculative benefits from which the MVDDS Parties stand to reap an undeserved windfall.

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<sup>9</sup> See, e.g., *Requests of Three Licensees of 22 MVDDS Licenses for Extension of Time to Meet the Final Buildout Requirement; Applications of Three Licensees for Renewal of 22 MVDDS Licenses*, Order, 33 FCC Rcd 10757 ¶ 13 (WTB 2018).

<sup>10</sup> *OneWeb and Arianespace to restart launches in December 2020*, (Sept. 21, 2020), <https://www.oneweb.world/media-center/oneweb-and-arianespace-to-restart-launches-in-december-2020> (noting that OneWeb plans to begin commercial services by the end of 2021 and Alaska is an initial region for service).

<sup>11</sup> See, e.g., Statement of Chairman Ajit Pai, *Mitigation of Orbital Debris in the New Space Age*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156 (2020) (“These non-geostationary satellite orbit, or NGSO, constellations could be a game changer, benefiting Americans across the country and making high-speed Internet access a reality for more consumers—particularly those in remote and hard-to-serve areas.”); TechFreedom Letter at 7 (“[t]he argument for [preserving the 12 GHz Band for satellite] is even more compelling today, when several companies are investing billions of dollars in building and now flying mega constellations of NGSO satellites that, at last, promise to provide highspeed, and more critically, low-latency, broadband to every corner of the planet.”).

The Operators respectfully submit that the Commission should dismiss the MVDDS Petition and look forward to working with the Commission and other important stakeholders to ensure the 12 GHz Band continues to facilitate the provision of key 5G connectivity services and programming to consumers in the United States.

Sincerely,

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