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February 3, 2020

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

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

Dear Ms. Dortch:

The record demonstrates that massive benefits to the American public and the U.S. economy will flow from rapid clearing of C-band spectrum for 5G services. Given those benefits, the Commission should drive a smooth and rapid process for clearing the spectrum, transitioning incumbent operations, and ensuring that existing services are not disrupted as they move out of the repurposed C-band spectrum.

The clearing process should begin promptly after the Commission issues an order. The framework should have two core elements: First, the incumbent C-band satellite operators providing service to the U.S. market should be on the ground and engaged in effectuating fast and complete clearing, with effective carrots and sticks in place to ensure a timely and smooth transition. Second, a transition facilitator should be in place to provide administrative oversight of the clearing and payment process to add rigor and supervision, but not bureaucracy or delay. Following an auction, the facilitator would be responsible for collecting payments from winning bidders, disbursing funds to achieve efficient clearing, promptly resolving disputes if necessary, and determining compliance with clearing milestones. This approach will result in a faster transition of the band to 5G services while minimizing bureaucracy and delay.

I. THE SATELLITE OPERATORS SHOULD SERVE A CENTRAL OPERATIONAL ROLE IN THE CLEARING PROCESS.

The incumbent satellite operators have the technical and operational expertise necessary to execute a rapid and efficient clearing process. They have years of experience managing C-band satellite networks. Their longstanding contractual relationships with programming customers who rely on satellite delivery give them a unique understanding and knowledge of the current use of the band and put them in the best position to coordinate the transition process. The satellite operators also have the experience, information, and operational capabilities necessary to coordinate the complex movement of customers and corresponding earth stations to

different transponders and different satellites necessary to minimize disruption of service during the transition.¹

The expertise of the satellite operators and their knowledge and planning for the C-band transition make them essential players in coordinating the right solution for each C-band programming customer and each earth station's operations. The satellite operators are best positioned to coordinate downlink operations while changing earth station operational frequencies, repointing earth stations, installing new filters, and deploying newer compression technologies filters. The benefits of this satellite operator expertise and experience are evident in the comprehensive and detailed transition plans in the record.² As the National Association of Broadcasters and numerous content programmers observed, "[a]ctive participation by satellite operators is the only way to protect the viewers and listeners that currently depend on the C-Band."³

The satellite operators also plan to consolidate 30-50 very large antennas used for satellite tracking, telemetry, and control ("TT&C") from existing teleports to only four new locations,⁴ and the satellite operators are best able to manage the move without disruption. Likewise, the satellite operators are best positioned to deploy any new satellites needed to ensure that needed capacity is available after the repurposing.

The Commission should establish a framework that ensures that the incumbent satellite operators are fully engaged in and accountable for the clearing process. Moreover, in service of the overriding goal to get this important spectrum quickly in the hands of 5G providers, the Commission should provide appropriate incentives and penalties for the satellite incumbents to keep this clearing process on track.

¹ Letter from Bill Tolpegin, CEO, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed January 24, 2020) ("CBA January 24 Letter").

² See, e.g., C-Band Alliance, Revised Transition Implementation Process, filed as attachment to Letter from Bill Tolpegin, CEO, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Nov. 8, 2019); Letter from Carlos M. Nalda, Counsel to Eutelsat S.A., to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 7 (filed Jan. 23, 2020) ("Eutelsat January 23 Letter").

³ Letter from Rick Kaplan, General Counsel and Executive Vice President, National Association of Broadcasters *et al.*, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Nov. 19, 2019).

⁴ See Letter from Bill Tolpegin, CEO, C-Band Alliance, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 5 (filed January 14, 2020) (noting that these existing sites would currently limit terrestrial use near parts of Los Angeles, San Francisco, Baltimore/Washington, Atlanta, and Denver).

II. THE RECORD REFLECTS THE IMPORTANCE OF COORDINATED CLEARING AND AN EFFECTIVE TRANSITION FACILITATOR.

The Notice of Proposed Rulemaking (“NPRM”) identified the importance of a coordinated effort to manage clearing “[b]ecause of the [satellite operator] holdout problem,” asserting that an approach in which each satellite operator operates independently “is unlikely to succeed.”⁵ Verizon agrees: given the varying interests of satellite operators, earth station operators, content programmers, and wireless stakeholders, the clearing and payments process is unlikely to be managed efficiently on a bilateral, one-to-one basis. The NPRM also noted support from stakeholders for “a centralized facilitator.”⁶

Since the adoption of the NPRM, a broad array of commenters has supported the appointment of a facilitator to coordinate the transition. For example, ACA Connects advocates the use of a “private party” to be “a neutral transition facilitator to oversee and supervise the transition, to collect payments by 5G licensees, and to manage the advance/reimbursement/incentive payment process.”⁷ The Competitive Carriers Association (“CCA”) supports appointment of “a neutral transition administrator to facilitate transition of the band, which could help reduce costs and ensure a fair and efficient process.”⁸ Eutelsat states that “it would benefit the transition for the Commission to engage a Transition Facilitator to support interested parties as the transition unfolds and to manage the Transition Fund,” and urges the Commission to “choose an experienced expert agency that will operate under fair and transparent decision-making and governance rules, and that is structured in a competitively neutral manner.”⁹ CCA also supports either the FCC or an independent transition facilitator “to perform various administrative functions, such as oversight of fund distribution.”¹⁰ Other commenters have made similar statements supporting the appointment of a facilitator.¹¹

⁵ *Expanding Flexible Use of the 3.7-4.2 GHz Band*, Notice of Proposed Rulemaking, 33 FCC Rcd 6915, 6940, ¶ 74 (2018).

⁶ *Id.* at 6939, ¶ 70.

⁷ Letter from Pantelis Michalopoulos, Counsel to ACA Connects, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 3 (filed December 11, 2019).

⁸ Letter from Alexi Maltas, CCA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 2 (filed Dec. 19, 2019).

⁹ Eutelsat January 23 Letter at 8-9.

¹⁰ CCA January 24 Letter at 1.

¹¹ *See, e.g.*, Comments of Public Interest Spectrum Coalition, GN Docket No. 18-122, at 21-23 (filed August 7, 2019); Letter from Michael Calabrese, Open Technology Institute at New America, to Marlene H. Dortch,

The Commission should thus designate the satellite operators to leverage their expertise and the detailed transition planning they have already accomplished to manage all clearing and repacking operations, and appoint a transition facilitator to oversee the payments process and resolve disputes. This approach will most efficiently advance the public interest objectives of this proceeding: by rapidly repurposing C-band spectrum, it will accelerate the deployment of 5G that will in turn generate immense benefits for consumers and the economy.

III. THE COMMISSION CAN PROMPTLY SELECT A TRANSITION FACILITATOR TO FOSTER SPEEDY AND ACCOUNTABLE CLEARING.

The transition facilitator should be responsible for ensuring that winning bidders have available funds to cover their obligations and for collecting those funds immediately prior to disbursing payments at appropriate intervals for the clearing and relocation of incumbent operations. The Commission should charge the facilitator with administering the clearing process fairly, quickly, efficiently, and without bureaucratic delay. The Commission should learn from its experience with the independent Transition Administrator used to implement the 800 MHz Band transition, which involved heavy, entrenched oversight and bureaucratic processes that contributed to more than a decade of delay in 800 MHz rebanding.

In its order, the Commission should delegate selection of the facilitator to the Wireless and International Bureaus (the “Bureaus”). The order should request stakeholders to seek agreement on a facilitator within a short period (e.g., 15 days) and identify that entity for the Bureaus to review and approve. If no agreement can be reached among stakeholders, the Bureaus should issue a public notice seeking nominations with a similarly short comment period, and then promptly select the facilitator.

IV. THE TRANSITION FACILITATOR SHOULD HANDLE ALL PAYMENTS AND DISBURSEMENTS, QUICKLY RESOLVE DISPUTES IF NECESSARY, AND ASSESS COMPLIANCE WITH MILESTONES.

The facilitator’s primary role should be to handle payments and disbursements in a timely and neutral manner to facilitate clearing, while also resolving disputes quickly and determining compliance with clearing milestones.

Secretary, FCC, GN Docket No. 18-122, at 2 (filed Dec. 13, 2019); Letter from Jason E. Rademacher, Counsel to the Church of Jesus Christ of Latter-day Saints, to Marlene H. Dortch, Secretary, FCC, at 7 (filed Nov. 19, 2019); Further Supplemental Comments of PSSI Global Services, LLC, GN Docket No. 18-122, at 12-14 (filed Aug. 7, 2019); Comments of Trinity Broadcasting Network and LPN Spectrum LLC (“LPN”), GN Docket No. 18-122, at 13 (filed May 16, 2019).

Payment and disbursement process. The Commission should condition its grants of repurposed C-band licenses on licensees' timely making clearing payments to the facilitator. Auction winners should make funds available to the facilitator in tranches based on the achievement of clearing milestones (discussed below), beginning after the grant of their long-form applications. Payments by winning bidders should be pro rata. The Commission could, for example, determine that each bidder's percentage payment obligations would be based on its percentage of the total winning bids. Payments will also cover the costs of the facilitator.

The facilitator would disburse payments to the satellite operators as clearing milestones are met, in accordance with the payment schedule that the Commission adopts. One option would be for a winning bidder to submit one third of its required payments to the facilitator within 10 days of the grant of its long-form application, the second third when 50% of the PEAs it won have been fully cleared, and the final third when 100% of its PEAs have been cleared.

The facilitator would disburse payments that it receives among satellite operators under a formula that the operators agree on. If the satellite operators cannot agree on a formula, then the Commission should determine how payments will be allocated.

The facilitator should also disburse payments to earth station operators in cases where an earth station operator decides to convert from C-band to fiber or some other means of transmission, provided they convert no later than the satellite-based transition in their market. In such a case, payment to the earth station operator should be in an amount equivalent to the cost related to satellite transitioning.

Dispute resolution. In addition to its role in handling payments, the facilitator must have authority to resolve disputes between satellite operators and earth stations or other interested parties in a timely manner. But any such dispute resolution process must be designed to ensure efficiency and timely clearing and avoid the arduous process that beset the 800 MHz reconfiguration in which the Commission became involved in numerous protracted disputes over clearing payments. The Commission could, for example, direct that disputes be resolved using baseball-style high/low arbitration. It should also set short deadlines for the facilitator to act on disputes, e.g., 15 days. As a last resort, the facilitator should refer still-unresolved disputes to the Commission, but adopting a high/low arbitration process should minimize any such disputes.

While the facilitator should oversee the transition process, the Commission should not preclude auction winners from negotiating alternative arrangements with satellite operators, earth station operators, or content providers to facilitate or accelerate the clearing process. Any such arrangements should be voluntary, however, and could not delay any party's payment or clearing obligations under the schedule established by the Commission or disadvantage other auction winners.

Monthly reporting. The facilitator should submit monthly reports to the Bureaus detailing clearing work accomplished, identifying whether the satellite operators have met the clearing schedule for each market established by the Commission, and all payments made to date. The Commission should also delegate to the Bureaus the authority to act on issues the facilitator may raise if they can be resolved under the order, or if not, to refer those issues to the full Commission.

Clearing schedule and penalties. The Commission should set specific milestones for the clearing process so that it is clear what steps must be accomplished and when. One option would be to require that 100 megahertz in specific PEAs be cleared within six months of the FCC Order, an additional number of PEAs within 12 months, and the remaining within 18 months. A similar phased clearing schedule would be adopted for the remaining spectrum but would extend over a longer period such as 36 months. The Commission would apply the same approach for the 36-month tranche. The facilitator would determine whether a PEA has been cleared.¹² Satellite operators' failure to meet clearing deadlines would result in reduced incentive payments to reflect the lost value to auction winners from delay in the accelerated clearing. For example, for every date that a clearing milestone is missed for a market, the payment for that market will be reduced by a specific percentage or amount.

¹² For purposes of determining whether a PEA has been cleared, the facilitator would take into account elections by earth station operators to use alternative distribution methods.

Marlene H. Dortch
February 3, 2020
Page 7 of 7

V. CONCLUSION

In sum, the Commission should task the satellite operators with executing the clearing of 300 megahertz of spectrum, and appoint a transition facilitator to collect and disburse clearing payments and resolve disputes arising from that process. This balanced approach will best ensure that the C-band is repurposed as rapidly and efficiently as possible. It will thus achieve the cardinal objectives of this proceeding: to ensure existing operations are transitioned without disruption, while delivering the benefits of 5G to the American public and the economy as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Johnson". The signature is fluid and cursive, with a prominent initial "W" and a long, sweeping tail.

William H. Johnson

cc: Tom Johnson
Ashley Boizelle
Deborah Broderson
Michael Carlson
Matthew Dunne
David Horowitz
Bill Richardson