

February 5, 2018

EX PARTE PRESENTATION

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

Re: Ex Parte Presentation in GN Docket No. 17-183, *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the MVDDS 5G Coalition¹ (the "Coalition") submits this letter to reiterate its support for making an additional 500 MHz of spectrum available for fifth-generation mobile broadband ("5G") use, and to respond to filings that attempt to slow the Commission's efforts to facilitate the 5G transition.

The Coalition supports making additional mid-band spectrum available for the delivery of next-generation wireless broadband services.² Next-generation wireless broadband networks need high-, mid- and low-band spectrum to function.³ But mid-band spectrum – defined broadly as spectrum between 3.7 GHz and 24 GHz – promises to serve as a critical foundation for 5G services because the spectrum combines the favorable coverage characteristics of lower-frequency bands with the high-capacity capability of high-frequency spectrum.

In a petition for rulemaking filed more than 18 months ago, the Coalition urged the FCC to remove unnecessary regulatory constraints on the 12.2-12.7 GHz band ("12 GHz Band") that prevent use of this spectrum for 5G wireless broadband services.⁴ The Coalition noted in the above-captioned proceeding that "[c]ompared to the highly encumbered bands that are the primary subject of the *Mid-Band Spectrum NOI*, the 12 GHz Band promises a much less

¹ The Coalition includes a cross-section of multichannel video distribution and data service ("MVDDS") and direct broadcast satellite ("DBS") licensees holding authorizations in the 12.2-12.7 GHz band, including: Braunston Spectrum LLC, Cass Cable TV, Inc., DISH Network L.L.C., GO LONG WIRELESS, LTD., MDS Operations, Inc., MVD Number 53 Partners, Satellite Receivers, Ltd., SOUTH.COM LLC, Story Communications, LLC, Vision Broadband, LLC, and WCS Communications, Inc.

² See generally *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, GN Docket No. 17-183, Notice of Inquiry, FCC 17-104 (Aug. 3, 2017) ("*Mid-Band Spectrum NOI*").

³ See, e.g., Commissioner Michael O'Rielly, *A Mid-Band Spectrum Win in the Making*, FCC Blog (July 10, 2017), <http://bit.ly/2va8RDb>.

⁴ See Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (filed April 26, 2016) ("12 GHz Band Petition"); see also *Consumer and Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, RM-11768, Report No. 3042 (CGB May 9, 2016).

complex opportunity to secure public access to much-needed spectrum for 5G operations.”⁵ The time to act on the pending petition to make this 12 GHz Band spectrum available for 5G is now. Unfortunately, certain commenters in the record offer misguided attempts to stifle potential 5G competition in the 12 GHz Band, and in so doing ignore detailed technical evidence and marketplace realities.

I. The Record Reflects Broad Support for the Coalition’s Proposal

There is widespread support in the record for the Coalition’s proposal to enable a two-way mobile broadband service in the 12 GHz Band. Indeed, parties have encouraged the Commission to examine this band as part of its efforts in this proceeding. The Computer & Communications Industry Association (CCIA) noted that the “band has many characteristics that would make it suitable for two-way mobile communications and help carriers meet ever-increasing demands for broadband traffic” and urged the Commission to “include the 12.2-12.7 GHz band in an NPRM based on comments from this *NOI*.”⁶ T-Mobile similarly asked the Commission to examine the 12 GHz band, among others, for “potential wireless mobile broadband use”⁷ and encouraged the Commission to “use this proceeding to further develop the record regarding the potential use of those bands for wireless mobile operations.”⁸ The Competitive Carriers Association (CCA) also previously explained that the 12 GHz Band “presents an excellent opportunity to make spectrum available to support 5G mobile broadband technologies.”⁹ Senators Cory Gardner and Michael Bennet also recently expressed bipartisan support for enabling 5G mobile broadband service in the 12 GHz band. Among other things, the Senators highlighted the importance of deploying 5G service and explained that “the Commission has an opportunity to build on their 5G efforts by considering the benefits of 5G mobile broadband use in the spectrum between 12.2-12.7 GHz.”¹⁰

II. The Commission Should Reject OneWeb’s Untimely Attempts to Stifle 5G Terrestrial Use of the 12 GHz Band

Other parties, unfortunately, want to block more efficient uses of the 12 GHz Band. In its reply comments, WorldVu Satellites Limited (“OneWeb”) once again makes untimely and misguided attempts to stifle efficient 5G terrestrial uses of the 12 GHz Band.¹¹ OneWeb argues that “action on the [MVDDS 5G Coalition] Petition is not in the public interest and the 12 GHz band is not a ‘suitable candidate’ for wireless broadband use because the planning, investment, and construction necessary to utilize this band for next-generation satellite-delivered broadband

⁵ Comments of the MVDDS 5G Coalition at 9-10, GN Docket No. 17-183, Oct. 3, 2017.

⁶ Reply Comments of the Computer & Communications Industry Association, GN Docket No. 17-183, at 4-5 (Nov. 15, 2017).

⁷ Reply Comments of T-Mobile USA, Inc., GN Docket No. 17-183, at 22 (Nov. 15, 2017)

⁸ *Id.*

⁹ Comments of Competitive Carriers Association, RM-11768, at 9 (June 8, 2016).

¹⁰ Letter from Senators Cory Gardner and Michael Bennet to Chairman Ajit Pai (Dec. 7, 2017).

¹¹ See Reply Comments of WorldVu Satellites Limited, GN Docket No. 17-183, Nov. 15, 2017 (“OneWeb Reply”).

is already well underway.”¹² OneWeb goes on to promise that it and other NGSOs are “actively building satellites specifically for use in this band to facilitate core satellite-to-user terminal communications that will provide connectivity to rural and remote areas in the U.S. and globally.”¹³

The Commission has already spoken clearly and unequivocally that any attempts by NGSO operators to enter the 12 GHz band assume the risk that future Commission action to support terrestrial use of the band could result in additional conditions or requirements:

“As such, today’s conditional grant of OneWeb’s request does not preclude the Commission from initiating a rulemaking proceeding regarding the 12.2-12.7 GHz band on its own motion or in response to a petition for rulemaking, including the MVDDS Coalition’s pending Petition, in the manner that best serves the public interest. Nonetheless, we note that OneWeb’s request includes several additional frequency bands, such that even if NGSO FSS systems were precluded entirely from the 12.2-12.7 GHz band, OneWeb would still retain a measure of flexibility to provide its proposed services. **Accordingly, any investments made toward operations in this band by OneWeb in the United States assume the risk that operations may be subject to additional conditions or requirements as a result of such Commission actions.**”¹⁴

OneWeb’s claims are puzzling, to say the least. As an initial matter, there is no evidence that OneWeb sought to challenge or modify the condition above that the Commission issued in connection with OneWeb’s U.S. market access application. And, the deadline to challenge or seek reconsideration of that condition has long since expired. Because the FCC stated unequivocally that OneWeb assumes the risk of entering the 12 GHz Band, there is no merit to OneWeb’s claims that the Commission should turn its back on the 12 GHz Band as a source of important terrestrial spectrum to support 5G.

As OneWeb correctly observes, the 12 GHz Band has not been put to optimal use in recent years.¹⁵ This is for well-documented reasons, including technical limits on power levels and prohibitions on two-way service, and lack of equipment availability.¹⁶ Far from being a “Hail Mary,” the Coalition’s rulemaking petition seeks to leverage the 5G transition to give the Commission an efficient path to unlocking additional terrestrial spectrum for deployment, which

¹² OneWeb Reply at 2.

¹³ *Id.*

¹⁴ See WorldVu Satellites Limited Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb NGSO FSS System, Order and Declaratory Ruling, IBFS File No. SAT-LOI-20160428-00041, FCC 17-77 ¶ 6 (June 23, 2017) (“*2017 NGSO Order*”) (emphasis added).

¹⁵ OneWeb Reply at 3 (“MVDDS licensees have largely allowed the 12 GHz band to lie fallow and appear to be relying on the regulatory ‘Hail-Mary’ of the MVDDS Petition to resurrect an otherwise vastly underutilized service.”)

¹⁶ 12 GHz Band Petition at 5-6.

would benefit consumers and the public interest. OneWeb’s claimed plans for the 12 GHz Band would have the opposite effect – they would preclude the use of the 12 GHz Band for terrestrial 5G use, which would be a loss for competition and innovation. This scenario is especially troubling given that OneWeb and NGSOs are pursuing multiple gigahertz of other spectrum to support their planned services. OneWeb’s market access application proposed to operate over a total of 5,900 megahertz of spectrum covering the 10.7-12.7 GHz, 14.0-14.5 GHz, 17.8-18.6 GHz, 18.8-19.3 GHz, 27.5-28.35 GHz, 28.35-29.1 GHz, and 29.5-30.0 GHz bands.¹⁷ OneWeb has advanced no argument justifying foreclosing terrestrial 5G use of the 12 GHz Band when it has so many other spectrum options. And, as noted above, the FCC has already found that OneWeb’s request includes “several additional frequency bands, such that even if NGSO FSS systems were precluded entirely from the 12.2-12.7 GHz band, OneWeb would still retain a measure of flexibility to provide its proposed services.”¹⁸.

The Coalition also disagrees with the various legal theories advanced by OneWeb in its attempt to thwart terrestrial 5G use of the 12 GHz Band. First, contrary to OneWeb’s view,¹⁹ the *Mid Band NOI* docket is a logical and efficient venue in which to discuss the future of the 12 GHz Band. Indeed, as the Coalition noted, “[c]ompared to the highly encumbered bands that are the primary subject of the Mid-Band Spectrum NOI, the 12 GHz Band promises a much less complex opportunity to secure public access to much-needed spectrum for 5G operations.”²⁰ Any exploration of new mid-band spectrum opportunities to support the coming 5G transition must account for bands that are ripe for commercial deployment, such as the 12 GHz Band. And, in any event, the Coalition’s request has long been for the Commission to open a separate rulemaking and docket where all legal and policy questions concerning the 12 GHz Band can be raised and resolved.

Second, OneWeb appears to be arguing that the Commission should not move forward with a rulemaking to explore 5G terrestrial services in the 12 GHz Band because there is already an adequate record exploring other “significant, unresolved concerns raised by the Coalition’s proposals.”²¹ To the contrary – while the Coalition has submitted detailed and extensive engineering filings in support of repurposing the 12 GHz Band, other parties with potential concerns, such as AT&T, have failed to meaningfully engage. Opening a rulemaking, as the Coalition has long advocated, will encourage all interested parties to come to the table to air any possible concerns with moving forward with 12 GHz band deployments and enable the public to benefit from new investment in terrestrial 5G services.

¹⁷ WorldVu Satellites Limited, Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb System, IBFS File No. SAT-LOI-20160428-00041, at 8 (filed Apr. 28, 2016).

¹⁸ 2017 NGSO Order ¶ 6.

¹⁹ OneWeb Reply at 4.

²⁰ Mid-Band NOI Comments at 8-9.

²¹ OneWeb Reply at 5.

III. AT&T Has Failed to Rebut Evidence in the Record that Demonstrates the Coalition’s Proposal Will Protect DBS Operations

Like OneWeb, AT&T attempts to thwart innovative 5G uses of the 12 GHz Band without meaningfully rebutting the Coalition’s extensive technical and policy contributions made to date. AT&T’s claim that the Coalition has “not presented any evidence that would support amending the rules established by the FCC to protect incumbent DBS users”²² totally ignores the rigorous technical analysis submitted in the record by the Coalition. The Coalition submitted two extensive technical reports, “MVDDS 12.2- 12.7 GHz Co-Primary Service Coexistence” (“Co-Existence Study I”) and “MVDDS 12.2-12.7 GHz Co-Primary Service Coexistence II” (“Co-Existence Study II”) prepared by Tom Peters, former Chief Engineer of the Commission’s Wireless Telecommunications Bureau.²³ The studies found, among other things, that deployment of the 12 GHz Band for mobile broadband services is feasible without adverse impact on the DBS licensees.²⁴

AT&T has had ample opportunity to respond to these studies, but in the 18 months since their submission, the company has failed to substantively address them. Instead, AT&T has limited its commentary to vague assertions regarding methodology, leaving the substance and conclusions unrebutted. AT&T’s silence speaks volumes: given its failure to provide any analysis of these studies, AT&T cannot credibly claim that “there is no basis for modifying the existing rules governing flexible use of the 12.2-12.7 GHz Bands.”²⁵ Indeed, DISH Network L.L.C., a member of the MVDDS 5G Coalition, serves millions of customers using the same 12 GHz spectrum as AT&T/DirecTV and yet fully supports the proposal for expanded flexibility and use of the 12 GHz Band in light of the low likelihood of interference to DISH’s core business of providing DBS services to the public.²⁶

IV. Conclusion

The MVDDS 5G Coalition urges the Commission to modernize its 12 GHz rules by acting on its long-pending petition for rulemaking for this band. Alternatively, the Commission should include the MVDDS 5G Coalition proposal for expanded and flexible use of the 12 GHz Band as part of the Commission’s efforts in this proceeding.

²² Comments of AT&T Services, Inc., GN Docket No. 17-183, at 23 (Nov. 15, 2017) (“*AT&T Mid-Band NOI Comments*”).

²³ See MVDDS 5G Coalition Comments, Attachment I, RM-11768, June 8, 2016 (“Coalition PN Comments”). See also MVDDS 5G Coalition Comments, Attachment A, RM-11768, June 23, 2016.

²⁴ Co-Existence Study I at 35.

²⁵ *AT&T Mid-Band NOI Comments* at 21.

²⁶ See Monica Allevan, DISH, Partners in MVDDS Coalition Petition to Get 12.2-12.7 GHz Band into 5G Realm, FierceWireless (May 11, 2016), available at <https://www.fiercewireless.com/tech/dish-partners-mvdds-coalition-petition-to-get-12-2-12-7-ghz-band-into-5g-realm>.

Respectfully submitted,
MVDDS 5G Coalition

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