



February 14, 2020

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

Re: Notice of Ex Parte Communication, ET Docket No. 18-122

Dear Ms. Dortch:

On February 13, 2020, Rick Kaplan, Alison Neplokh, Robert Weller and the undersigned, of the National Association of Broadcasters (NAB), together with Susan Fox of The Walt Disney Company, Ann West Bobeck of Fox Corporation, Keith Murphy of ViacomCBS Inc., Catherine Carroll of Discovery, Inc., and Matthew DelNero of Covington & Burling LLP, representing the Content Companies (Discovery Inc., The Walt Disney Company, Fox Corp., Univision Communications Inc.,¹ and ViacomCBS Inc.) held separate meetings with William Davenport of Commissioner Starks' office, Erin McGrath of Commissioner O'Rielly's office, Umair Javed of Commissioner Rosenworcel's office, and Nick Degani of Chairman Pai's office.² During these meetings, we discussed a number of potential concerns with the Commission's draft order in the C-band proceeding and identified means by which the Commission could revise the order to mitigate risks to the content delivery ecosystem.³

Protecting Viewers and Listeners

We appreciate Chairman Pai's commitment to protecting the content distribution ecosystem that reliably serves nearly 120 million American households in connection with any reallocation of C-band spectrum.⁴ Specifically, the Chairman has stated that "we must

¹ Univision was unable to attend these meetings but supports the positions set forth in this letter.

² Ms. Carroll did not attend the meeting with Mr. Davenport.

³ *Expanding Flexible Use of the 3.7-4.2 GHz Band*, Draft Report and Order and Order of Proposed Modification, GN Docket No. 18-122, FCCCIRC2002-01 (Feb. 7, 2020) (Draft Order).

⁴ Letter from Chairman Ajit Pai to the Hon. John N. Kennedy (Nov. 18, 2019) available at: <https://docs.fcc.gov/public/attachments/DOC-360855A14.pdf>.

protect the services that are currently delivered using the C-band so they can continue to be delivered to the American people.”⁵ We agree and throughout this proceeding have worked cooperatively with other stakeholders to determine how spectrum can be made available for 5G while achieving the Chairman’s stated goal of preserving services that ultimately make news, sports, entertainment and other content available to the American public.

Giving effect to that commitment means that the standard for a successful transition should not be merely confirming that satellites cease transmitting in the lower 300 MHz, and that earth stations be capable of receiving satellite transmissions in the upper 200 MHz without harmful interference from new flexible use licensees. It should mean that the *services* delivered today by satellite operators over the C-band are successfully transitioned to the upper 200 MHz and maintained throughout and after the transition. To that end, we agree with AT&T that the standard for a successful transition should be the availability to earth stations of services with the same or better video and audio quality that they enjoyed pre-transition.⁶ We urge the Commission to expressly state that the obligation of satellite providers, and the definition of a successful transition, includes the preservation of service – in addition to the deployment of comparable facilities.

Successfully reallocating 300 MHz of C-band spectrum while preserving service quality requires honoring specific commitments satellite operators have made to individual customers. Put simply, satellite companies should be held to the commitments made to their customers throughout the course of this proceeding. Those commitments do not “expire” at a satellite company’s option. It is those commitments that guarantee continued service. To ensure those commitments are upheld, and to maximize the chances for a successful transition that meets the standard of protecting the services currently delivered using the C-band, the Commission should take four steps.

First, the Commission should allow satellite customers to comment on each satellite operator’s transition plan before approving it. The draft order specifies that space station operators must submit to the Commission and make available for public review a comprehensive transition plan, but the draft does not expressly provide for comment from programmers and/or earth station operators.⁷ The Commission should seek comment to ensure that the transition plan comports with existing commitments and that impacted stakeholders agree the plan, if successfully executed, will preserve service through and after the transition. The draft directs satellite operators to file transition plans by July 13, 2020, and to revise them by August 12, 2020. We propose the Commission allow affected

⁵ *Id.*

⁶ Letter from Michael P. Goggin to Marlene H. Dortch at 3, GN Docket No. 18-122 (Feb. 4, 2020).

⁷ Draft Order at ¶ 270.

stakeholders (including programmers and earth station operators) until August 3, 2020 to certify agreement with transition plans or to file comments identifying specific concerns.⁸

Second, during the transition itself, the Commission should require the Clearinghouse to resolve disputes concerning comparability and workmanship of facilities and preservation of service, not only reimbursement, as they arise.

Third, the Commission should seek information not only from space station operators, but from other stakeholders, to confirm that the transition has been successfully completed. While requiring individual certifications of completion from 20,000 earth stations would be unduly burdensome both for earth station operators and the Commission, we urge the Commission to issue a Public Notice when space station operators certify completion that invites other stakeholders to identify any deficiencies or ongoing challenges within 30 days.

Fourth, while we understand the interest in avoiding gold-plating of facilities during the transition, the Commission should not require or allow the Clearinghouse to second guess specific commitments already made by the satellite operators that are necessary to ensure continued service, or specific technology choices made by programmers. This is particularly important because there will not be “one size fits all” solutions for the transition. Technology choices, including specific compression (including HEVC or AVC) and modulation choices, are highly dependent on specific programming formats and requirements, meaning that some choices may be appropriate for some customers but not others. Further, preserving the ability to offer higher resolution programming (such as 4K, which some programmers are already deploying) will be critical to protecting the viability of the content ecosystem.

We ask the Commission to clarify that technology choices that are reflected in the transition plan submitted to the Commission, after stakeholder review and comment and approval by the Commission, and compression choices made by programmers, will be deemed presumptively reasonable.

Opt In by the Satellite Operators

We have repeatedly emphasized the importance of satellite operator participation in a successful transition. Much of the draft order discusses how the transition will unfold assuming that satellite operators choose to pursue accelerated clearing and the associated incentive payments. In the event the satellite operators do not opt in, however, the Commission and all stakeholders may be faced with a significantly more complex transition,

⁸ The draft order contemplates redactions for specific identifying customer information, but as much transparency as possible in the transition plans. Individual customers should be able to access unredacted versions of the plans and provide comments with proprietary information redacted.

for which no party has planned. Should satellite operators representing 80 percent of the incentive payments not to opt in, the Commission should convene a meeting of all affected stakeholders to ensure that the satellite operators' choice combined with the threat of a license sunset does not threaten continued service to hundreds of millions of Americans.

Along the same lines, the set of carrots and sticks the draft order proposes for clearing spectrum creates a hazardous set of incentives for the satellite operators to certify that they have cleared the lower 300 MHz at all costs – either to receive their incentive payments or avoid draconian sanctions. We are concerned that a satellite operator may be incented to let nothing stand in the way of meeting the deadline, not even its obligations to customers and the viewers they ultimately serve. A more reasoned approach, such as a sliding scale where acceleration payments decrease gradually over time, and flexibility for the license sunset due to unavoidable delays, could help mitigate that risk. In the event the satellite operators opt in to accelerated clearing, we propose decreasing payments by 7.5 percent for every month delayed, with payments set to zero after a delay of a year. We would also urge the Commission to consider extensions of the final clearing deadline in the event of delays outside of the satellite operators' control.

Technical Rules

We are concerned that certain of the draft order's technical rules fail to adequately protect continued operations in the 4.0-4.2 GHz satellite band. In particular, proposed rule 27.1423 sets an out-of-band power flux density limit of -124 dBW/m²/MHz at earth station antennas and an in-band limit of -16 dBW/m²/MHz. The draft arrives at these limits by a series of overly optimistic assumptions, most significantly an assumed earth station antenna gain of 0 dBi in the direction of any wireless base stations. This assumption holds only if the wireless base station is at least 19 degrees off-boresight from the orientation of the earth station antenna. While this assumption may be reasonable in many cases, there will certainly be exceptions, particularly when wireless base stations are within 10 kilometers of locations where additional mitigations may be necessary to ensure continued reliable service in the 4.0-4.2 GHz satellite band.

We appreciate the draft order's inclusion of a multi-stakeholder group that OET will convene to discuss interference prevention, detection, mitigation and enforcement.⁹ We urge the Commission to require wireless licensees to coordinate with nearby earth stations to ensure adequate protection to ongoing operations, and to specifically require the multi-stakeholder group to include discussion of how best to facilitate such coordination in light of concerns around out-of-band emissions.

⁹ Draft Order at ¶ 296.

Occasional Use

Transportable earth stations play an important role in the content ecosystem that American television viewers enjoy today. Transportable earth stations receive content from C-band downlinks and directly insert that content into programming created onsite. While the draft order establishes that transportable earth stations are entitled to the same filtering solutions and other cost reimbursement as fixed earth stations, the draft order makes no provision for continued occasional use as a practical matter. The Commission should take two steps to accommodate occasional use.

First, the Commission should allow a limited number of registrations for transportable earth stations at common venues. Permitting registration would provide transportable earth stations operating at those venues with the same protections as registered fixed earth stations. Of course, potential auction bidders may have concerns over registration at a very large number of sites – but registration at a limited number of sites is critical to preserving the content distribution ecosystem. We urge the Commission to direct the multi-stakeholder group to include discussion of site registration for occasional use.

Second, the Commission should allow space station operators to continue to transmit in the 3700-4000 MHz band on a secondary, unprotected basis. As a technical matter, the risk of interference between wireless and satellite operations is from wireless operations to earth stations, not from satellite transmissions to wireless base stations or handsets. Allowing secondary, unprotected operations on 3700-4000 MHz would not pose a risk of interference to new wireless services in the band but would allow opportunities for occasional use in areas where 5G service has not yet deployed.

Transport, Telemetry & Control and International Gateway Sites

The draft order requires consolidation of existing tracking, telemetry and control (TT&C) functions to four locations and protects TT&C operations for a period of ten years.¹⁰ After that period, the order permits TT&C links to continue to operate on an unprotected basis until the satellites they are communicating with cease operation, or for longer pursuant to negotiated agreements.¹¹

The draft order, however, overlooks the fact that the C-band Alliance identified these four locations for international gateway operations as well as TT&C. Under the CBA's proposal, these four locations would serve as ingestion points for significant amounts of international content for which there is no other obvious alternative for delivery.

¹⁰ Draft Order at ¶ 338.

¹¹ *Id.*

We propose that the Commission allow content to continue to be delivered to these four locations using the 3700-4000 MHz band on an unprotected basis for the same ten-year time frame as TT&C operations, or longer pursuant to negotiated agreements. Again, allowing unprotected operations in the 3700-4000 MHz band poses no risk of interference to new wireless services, and operators would bear the costs of any technical solutions, such as shielding, to protect these gateways. We urge the Commission to direct the multi-stakeholder group to include this issue in discussions.

Earth Station Operator Costs

If the satellite operators opt in to the accelerated clearing, the draft order requires them to take responsibility for coordinating with earth station operators to perform any necessary work to allow earth stations to continue receiving C-band services once they are transitioned to the upper portion of the band.¹² However, the draft order also requires the Clearinghouse to collect cost estimates from earth station operators for the costs of relocating all 20,000 earth stations. This is a significant burden on earth station operators, including many small broadcasters and an unnecessary administrative burden, and expense, for the Clearinghouse.

We propose the following modifications. First, if satellite operators opt in, they should take responsibility for providing true turnkey transitions to earth stations. Satellite operators should provide aggregate cost estimates to the Clearinghouse and seek reimbursement themselves for the costs of the transition. Second, for networks that typically perform this work or a portion thereof (e.g., receiver replacement) for their affiliates, the networks should have the option of providing a similar turnkey service – submitting aggregate cost estimates and seeking reimbursement for work they perform. Finally, the Commission should establish a flat reimbursement rate for earth station operators that will perform work, such as installing filters, on their own facilities but lack the resources to prepare and track invoices and other documentation necessary for reimbursement.

Lump Sum Option

The draft order provides the option for earth station operators to accept a lump sum relocation payment in lieu of actual relocation costs. Earth station operators electing this option would then be responsible for performing their own relocation actions, including switching to alternative transmission mechanisms.¹³

¹² *Id.* at ¶ 171.

¹³ *Id.* at ¶ 261.

While we do not object to providing this option, the Commission should make clear that it is not opening the door to abrogation of existing programmer contracts with affiliates or cable systems. In particular, the Commission should expressly state that nothing in its order is intended to affect or change the terms of any private contractual arrangement.¹⁴

We appreciate the hard work of the Commission and the staff in this proceeding. We look forward to continuing to work with the Commission and other stakeholders to ensure a successful transition that fully protects the services currently delivered using the C-band.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Patrick McFadden", with a long horizontal flourish extending to the right.

Patrick McFadden
Associate General Counsel,
National Association of Broadcasters

cc: William Davenport
Nick Degani
Umair Javed
Erin McGrath

¹⁴ See, e.g., *Transforming the 2.5 GHz Band*, Report and Order, 34 FCC Rcd 5349, ¶ 30 (2019).