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**EX PARTE COMMUNICATION**

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

**Re: 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:

DISH Network L.L.C. (“DISH”) submits this letter in response to filings by AT&T Services, Inc. (“AT&T”), Space Exploration Holdings, LLC (“SpaceX”), and various interest groups that they support opposing a Petition for Rulemaking in this proceeding.<sup>1</sup> AT&T, SpaceX and their supporters cite a litany of purported risks associated with initiating a rulemaking proceeding to revisit government-imposed constraints on 12 GHz broadband deployment adopted nearly twenty years ago.<sup>2</sup> Technology has, of course, advanced considerably since then. The sector has developed and deployed any number of spectrum-related innovations, such as Multiple Input Multiple Output antennas to make use of higher-frequency spectrum, channel bonding to better integrate discrete bands of spectrum across large ranges of frequency, and Dynamic Spectrum Sharing to increase efficiency associated with moving from prior generation to next-generation networks.<sup>3</sup> And for its part, the Commission has developed many tools to increase the efficiency of spectrum use, ranging from lifting outdated regulations no longer warranted by

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<sup>1</sup> See, e.g., AT&T *Ex Parte* Letter, RM-11768 (filed Oct. 16, 2020); Grover Norquist et al. Joint *Ex Parte* Letter, RM-11768 (filed Oct. 16, 2020); OneWeb, AT&T, SpaceX, Intelsat License LLC, SES S.A., Kepler Communications Joint *Ex Parte* Letter, RM-11768 (filed Oct. 20, 2020); National Taxpayers Union *Ex Parte* Letter, RM-11768 (filed Oct. 20, 2020); SpaceX Notice of *Ex Parte*, RM-11768 (filed Oct. 20, 2020); USTelecom *Ex Parte* Letter, RM-11768 (filed Oct. 21, 2020); Citizens Against Government Waste *Ex Parte* Letter, RM-11768 (filed Oct. 22, 2020).

<sup>2</sup> See *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*, First Report and Order and Further Notice of Proposed Rule Making, 16 FCC Rcd 4096 (2000).

<sup>3</sup> See *What is MU-MIMO? How does it work and why do I need it?*, DIGITAL AIR WIRELESS (last visited Oct. 22, 2020), <https://bit.ly/3ko9DqI>; Jason Hintersteiner, *Channel Bonding In WiFi: Rules And Regulations*, NETWORK COMPUTING (Jan. 25, 2016), <https://bit.ly/35tFeAw>; Sue Marek, *Dynamic spectrum sharing could be the 5G solution that wireless operators are looking for*, FUTURITHMIC (Aug. 14, 2020), <https://bit.ly/3okagU4>.

technology, to using incentive auctions to recapture and sell previously licensed spectrum, to adopting Spectrum Access Systems to manage the relationships between sensitive legacy systems and innovative new ones.<sup>4</sup>

While the technology and tools the Commission has at its disposal to increase investment and accelerate deployment have changed in the last twenty years, in the view of AT&T and SpaceX, the need for additional information on the feasibility of relaxing government regulatory constraints on the 12 GHz band deployments is reason enough not to ask questions in the first instance.

The truth is the purported concerns raised by AT&T, SpaceX and their allies are precisely *why* the Commission should adopt a Notice of Proposed Rulemaking.<sup>5</sup> As one of the leading textbooks on administrative law explains, “[r]ulemaking, of course, gathers facts and makes factual determinations. . . .”<sup>6</sup> In other words, the very purpose of rulemaking is for the administrative agency to “evaluate the reliability of underlying facts, as contained in the record.”<sup>7</sup> In this case, initiating a rulemaking proceeding will allow the Commission to analyze the validity of the opponents’ claims as well as provide the public an opportunity to present additional technical studies, develop plans for spectrum assignment mechanisms, submit proposals for mitigation measures if needed, and generally address each of the concerns that AT&T, SpaceX and their supporters raise.

The notice-and-comment process offers a “useful means of accommodating conflicts” because it allows the Commission to “carry on a dialogue with the affected persons.”<sup>8</sup> Given the twin national imperatives of bringing spectrum to its highest and best use while unleashing spectrum for broadband connectivity, issuing a notice of proposed rulemaking will allow debate to move from hollow rhetoric to the types of pragmatic solutions the country needs to accelerate 5G investment and innovation.

Please feel free to contact me with any questions regarding this submission.

Sincerely,

/s/ Jeffrey H. Blum

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<sup>4</sup> See *Review of the Commission’s Rules Governing the 896-901/935-940 MHz Band*, Report and Order, Order of Proposed Modification, and Orders, 35 FCC Rcd 5183 (2020); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567 (2014); *Promoting Investment in the 3550-3700 MHz Band*, Report and Order, 33 FCC Rcd 10598 (2018).

<sup>5</sup> See 5 U.S.C. § 553(c).

<sup>6</sup> Charles H. Koch, Jr. & Richard Murphy, *Administrative Law and Practice* at § 2:11 (2d ed. 2020).

<sup>7</sup> *Id.* at § 4:44.

<sup>8</sup> James T. O’Reilly, *Administrative Rulemaking* at § 22:16 (2020 ed.).