

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	
Petition of Starlink Services, LLC)	WC Docket No. 09-197
for Designation as an Eligible)	
Telecommunications Carrier)	
)	

REPLY TO OPPOSITION

Starlink Services, LLC (“Starlink Services”) replies to the partial opposition of DISH Network Corporation (“DISH”)¹ to Starlink Services’ petition for designation as an Eligible Telecommunications Carrier (“ETC”).² DISH’s Opposition ignores and conflicts with the Commission’s clear decision to permit applicants for the Rural Digital Opportunity Fund (“RDOF”) Phase I auction to rely on spectrum in the 12.2-12.7 GHz band (“12 GHz band”) to meet their RDOF obligations. This facially spurious filing is only the latest example of DISH’s abuse of Commission resources in its misguided effort to expropriate the 12 GHz band. The Commission should reject DISH’s Opposition as a baseless attempt to obstruct the ETC and RDOF processes, the result of which would serve only to delay what matters most—connecting unserved Americans.

In establishing the RDOF rules and procedures, the Commission sought comment on, deliberately considered, and specifically identified the spectrum that could be used to meet RDOF

¹ See Partial Opposition of DISH Network Corporation, WC Docket No. 09-197 (filed Feb. 22, 2021) (“Opposition”).

² See Petition of Starlink Services, LLC for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (filed Feb. 3, 2021) (“Petition”).

public interest obligations.³ Appendix B of the Commission’s RDOF Procedures, as adopted by the full Commission, lists the spectrum bands RDOF applicants could rely upon to meet their performance requirements.⁴ That list—like the equivalent spectrum list used for the CAF II auction—unequivocally includes the 12 GHz band. No party challenged that decision, which was relied upon by applicants participating in the RDOF auction.

DISH now claims that the Commission’s decision to permit RDOF applicants to use the 12 GHz band to meet performance requirements has somehow been rendered invalid for two reasons: (i) because DISH opposes the license modification of Space Exploration Holdings, LLC (“SpaceX”)⁵ and/or (ii) because the Commission’s notice of proposed rulemaking on 12 GHz band spectrum, which was adopted months after the conclusion of the auction, somehow invalidates the Commission’s decision to include this band as part of its procedures for the auction.⁶ Neither argument holds water.

Clearly, this challenge is part of DISH’s larger campaign to cash in on its spectrum speculation in the 12 GHz band by antagonizing non-geostationary orbit (“NGSO”) satellite operators already licensed to operate in that spectrum. The Commission should decisively reject across all of those proceedings these blatant efforts to misuse Commission resources. Here, with

³ *Comment Sought on Competitive Bidding Procedures and Certain Program Requirements for the Rural Digital Opportunity Fund Auction (Auction 904)*, Public Notice, 35 FCC Rcd. 2295, ¶ 40 (2020).

⁴ *Rural Digital Opportunity Fund Phase 1 Auction Scheduled for October 29, 2020, Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd. 6077, 6188 App. B (2020) (“RDOF Procedures PN”).

⁵ Application of Space Exploration Holdings, LLC for Modification of Authorization for the SpaceX NGSO Satellite System, IBFS File No. SAT-MOD-20200417-00037 (filed Apr. 17, 2020).

⁶ Opposition at 2.

respect to Starlink Services' ETC Petition, these claims are not just meritless, but entirely irrelevant.

First, SpaceX's application for a modification was filed months before the Commission adopted the procedures for the auction, meaning the Commission was well aware of SpaceX's pending application for a safety upgrade when it adopted the procedures for the auction. Nonetheless, the Commission decided to include the 12 GHz band in the auction and to allow SpaceX to participate, even after a short-form review involving heightened scrutiny. DISH's argument now that its opposition to the modification somehow renders those Commission decisions meaningless is nonsensical. Moreover, the record for the modification demonstrates decisively that DISH remains unable to level any opposition consistent with Commission rules.

Second, DISH's claims are not only contrary to the RDOF procedures, they even ignore the 12 GHz rulemaking itself. In the 12 GHz rulemaking, the Commission made clear that no new rules could be adopted unless the Commission could do so "without causing harmful interference to incumbent licensees" such as SpaceX.⁷ This is no small hurdle given that DISH's own technical showings demonstrate this is not possible. Even more relevant, far from reversing its RDOF spectrum decisions in these proceedings, the Commission has embraced them. The 12 GHz NPRM expressly acknowledges that SpaceX has deployed the largest satellite constellation in the world and that, pursuant to its RDOF-awarded areas, its network will be used to provide high-speed, low-latency broadband service to over 600,000 of the nation's hardest-to-reach locations.⁸ The NPRM makes clear that incumbent licensees must be protected, emphasizing the "public interest benefits

⁷ *Expanding Flexible Use of the 12.2-12.7 GHz Band*, Notice of Proposed Rulemaking, FCC No. 21-13, WT Docket No. 20-443, ¶ 2 (rel. Jan. 15, 2021) ("12 GHz NPRM").

⁸ *Id.* ¶¶ 17, 56.

that could flow from investments made to provide satellite broadband services, particularly in rural and other underserved communities that might be more expensive to serve through other technologies.”⁹ And it specifically asks how, in considering changes to the 12 GHz band, the Commission can “ensure that the locations successfully bid for through the RDOF process get access to the broadband Internet access service committed to through that program.”¹⁰ The Commission gave no indication that it intended to undo in any way its prior decision to include the 12 GHz band in Appendix B of the RDOF procedures.

Contrary to DISH’s specious claims, this is nothing like the Commission’s express decision—in the RDOF Procedures PN itself—to exclude 5.850-5.925 GHz spectrum (“5.9 GHz band”) from Appendix B.¹¹ In that context, the Commission determined that applicants could not rely on unlicensed spectrum in the 5.9 GHz band because of the pending rulemaking in that band. Absent a decision in that rulemaking, however, 5.9 GHz spectrum *was not available for fixed unlicensed service*, so it makes perfect sense that the Commission deemed it “premature” to allow RDOF applicants to rely on operations in that band. For similar reasons, the Commission required applicants seeking to rely on spectrum they hoped to—but did not yet—obtain in upcoming auctions to identify alternatives that would allow them to fulfill their RDOF obligations, should they not ultimately be successful in the auction.¹² By contrast, the Commission made no such RDOF decision to exclude or condition applicants’ reliance on the 12 GHz band. There was no reason to do so; that spectrum had already been allocated for NGSO satellite use and licensed to a

⁹ *Id.* ¶ 2.

¹⁰ *Id.* ¶ 56.

¹¹ RDOF Procedures PN ¶ 89 (citing *Use of the 5.850-5.925 GHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd. 12,603 (2019)).

¹² *Id.* ¶ 313 n.546.

number of NGSO satellite systems for broadband service at the time the procedures were adopted. The subsequent issuance of an NPRM, which made no change to the RDOF spectrum determinations and which, if it results in any rules, will ensure that incumbent 12 GHz licensees' operations are protected, does nothing to change that.

Nor does the fact that 12 GHz spectrum licenses are subject to future Commission rulemakings change anything for purposes of Starlink Services' ETC Petition.¹³ As SpaceX has pointed out repeatedly, this condition is standard boilerplate that is included even in licenses that do not include the 12 GHz Band. To be clear, SpaceX will fully comply with the terms of its licenses, including any reasonable changes made in future Commission rulemakings. But the existence of that license condition in no way changes the Commission's decision in the RDOF proceeding to permit applicants to rely on the 12 GHz band to meet their RDOF requirements or—more importantly—Starlink Services' satisfaction of all federal ETC requirements, as demonstrated in the Petition. To let a single boilerplate condition supersede all other Commission rules would render Commission licenses meaningless.

In short, its groundless arguments reveal DISH's Opposition's real purpose: to obstruct the ETC designation and RDOF processes as part of DISH's larger efforts to hamstring a competitor and to commandeer valuable spectrum already being used to serve American homes and businesses. DISH presents no valid basis on which to deny or defer Starlink Services' ETC designation. To the contrary, doing so would serve only to impede Starlink Services' ability to meet its RDOF public interest obligations. Even more importantly, it would delay the provision of high-quality voice and broadband service to many of our nation's hardest-to-serve communities, which have gone unconnected for far too long already. The Commission should reject DISH's

¹³ Opposition at 6, 10.

baseless Opposition—as well as all of its related attacks across multiple proceedings—and promptly grant Starlink Services’ ETC designation.

Respectfully submitted,

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