



March 10, 2021

*Via ECFS*

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

**Re: *Written Ex Parte Communication***

**WT Docket No. 19-348**, *Facilitating Shared Use in the 3100-3550 MHz Band*  
**AU Docket No. 21-62**, *Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band (Auction 110)*

Dear Ms. Dortch:

In its recent *ex parte* letter, DISH Network Corporation (“DISH”) proposes a number of changes to the rules that would govern the 3.45-3.55 GHz band (the “3.45 GHz band”) on the one hand and that already apply to the 3.55-3.7 GHz band (the “CBRS band”) on the other. In both cases, the proposed rules would extend DISH’s history of enriching itself while delaying the deployment of spectrum and services. DISH proposes changes to the 3.45 GHz band that would limit competition in the auction for that spectrum and that would relax the proposed build out requirements in a way that would delay deployment of service. In addition, DISH proposes changes to the CBRS band rules that would undermine the rationale on which the Commission relied in creating the rules for the licensing and use of that band in order to enrich itself while simultaneously creating interference into the 3.45 GHz band and jeopardizing the success of that auction.<sup>1/</sup> The Commission must reject these efforts. As also addressed below, the Commission should similarly reject the request of the Aerospace Industries Association (“AIA”) that asks the Commission to reverse the position in the *Draft 3.45 GHz Order* on the protection of contractor testing and experimentation activities in the 3.45 GHz band.<sup>2/</sup>

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<sup>1/</sup> See Letter from Jeffrey H. Blum, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348 (filed Mar. 5, 2021) (“DISH *Ex Parte* Letter”).

<sup>2/</sup> See, e.g., Letter from Karina Perez Molina, Manager, Unmanned and Emerging Aviation Technologies, Aerospace Industries Association, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348 (filed Mar. 8, 2021).



### ***The DISH Ex Parte Letter is Procedurally Inappropriate***

While submitted in the 3.45 GHz band proceeding, much of the DISH *Ex Parte* Letter is unrelated to the 3.45 GHz band. In particular, DISH urges the Commission to make changes to the rules governing the CBRS band so that they are “rationalized” with the 3.45 GHz band.<sup>3/</sup> But the Commission has proposed no changes to the rules governing the CBRS band in this proceeding and may not do so consistent with the Administrative Procedures Act. And if the Commission pauses the 3.45 GHz band proceeding to make changes to the CBRS band rules, it will be unable to meet the deadline that Congress has imposed to initiate an auction of the 3.45 GHz band (a timeline that DISH seemingly endorses) by December 31, 2021.<sup>4/</sup> If DISH seeks changes to the CBRS rules, it must request that the Commission initiate a rulemaking proceeding to do so. Otherwise, it is simply submitting an untimely petition for reconsideration of the CBRS rules, and its request should be dismissed.

### ***There is No Basis for Changing the CBRS Rules in Any Case***

Even if the DISH *Ex Parte* Letter was not procedurally flawed, there is no substantive basis for the Commission to consider the changes to the CBRS rules DISH proposed. Acting Chairwoman Rosenworcel recently observed that the Commission was “making history with this innovative band.”<sup>5/</sup> But the innovative nature of the CBRS band is premised on low-power use of the spectrum over limited geographic areas, accessible through a spectrum access system (“SAS”). DISH’s proposal would turn that experiment on its head even before systems in the band, which have been planned for years to operate consistent with the current rules, are fully deployed. Moreover, the limits that DISH now seeks to overturn were adopted – as Acting Chairwoman Rosenworcel similarly observed – to protect “long-standing operations by the Department of Defense [“DoD”].”<sup>6/</sup> DISH provides no justification why that careful agreement with DoD should be disturbed, particularly as the new Administration attempts to repair the frayed relationship between the FCC and DoD.<sup>7/</sup>

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<sup>3/</sup> See DISH *Ex Parte* Letter at 1.

<sup>4/</sup> See Consolidated Appropriations Act, 2021, H.R. 133, div. N, tit. IX, § 905(d)(1)(B) (2020); DISH *Ex Parte* Letter at 1 n.2.

<sup>5/</sup> News Release, *Acting Chairwoman Rosenworcel Commends Progress in 3.5 GHz Band Spectrum Sharing Regime*, FCC (Mar. 9, 2021), <https://docs.fcc.gov/public/attachments/DOC-370639A1.pdf>.

<sup>6/</sup> See *id.*

<sup>7/</sup> See, e.g., Letter from Frank Pallone, Jr., Chairman, Committee on Energy and Commerce, U.S. House of Representatives, and Greg Walden, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives, to The Honorable Gene L. Dodaro, Comptroller General of the United States, U.S. Government Accountability Office (Jan. 24, 2020), [https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/GAO.1.24.2020.%20Letter%20re%20GAO%20NTIA%20Spectrum%20Management%20Letter.CAT\\_.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/GAO.1.24.2020.%20Letter%20re%20GAO%20NTIA%20Spectrum%20Management%20Letter.CAT_.pdf); Letter from Doris Matsui, U.S. House of Representatives, to The Honorable Joseph R. Biden, Jr., President-elect (Jan. 8, 2021), [https://matsui.house.gov/uploadedfiles/20210108\\_-\\_spectrum\\_strategy\\_.pdf](https://matsui.house.gov/uploadedfiles/20210108_-_spectrum_strategy_.pdf).

Further, consistent with its approach to the AWS-4 band,<sup>8/</sup> DISH is merely attempting to enhance the value of its spectrum holdings after the fact. DISH was the high bidder on the greatest number of licenses in the CBRS auction and wants the Commission to enhance the value of its winnings.<sup>9/</sup> The Commission should not permit DISH to continue its shell game. The rules governing the CBRS band that were the subject of the just-concluded auction were well-known and extensively debated for several years. Stakeholders made important decisions about participation in the auction, including the desirability of holding spectrum in particular markets and for specific applications, based on those rules. Changing the rules for DISH's benefit so close to the auction will undermine auction integrity – demonstrating to potential bidders that they may be getting (or not getting) something different than what the Commission made available.

Finally, while attempting to enhance the value of CBRS spectrum, DISH fails to acknowledge the impact of the rules it proposes on the value and utility of the 3.45 GHz band, which is positioned to be valuable high-power mid-band spectrum suitable for 5G operations. The rules that are proposed for the 3.45 GHz band are premised on the use of the CBRS band under current rules. An increase in the power level of operations in the CBRS band increases the risk of interference to the 3.45 GHz band or a potential need to reduce power at geographic area borders. Both of those outcomes would reduce the utility and value of the band. That potential result is particularly problematic because of the \$14.78 billion reserve price the Commission proposes in order to satisfy the requirements under the Commercial Spectrum Enhancement Act to ensure that DoD is reimbursed for its costs to relocate or share as a result of the reallocation of the 3.45 GHz band.<sup>10/</sup> DISH's proposal may therefore jeopardize the success of the 3.45 GHz band auction.

### ***DISH's Proposed Changes to the Rules Governing the 3.45 GHz Band are Without Merit***

DISH proposes several changes to the proposed 3.45 GHz band rules. The Commission should reject all of them.

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<sup>8/</sup> See *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Report and Order, 27 FCC Rcd 16102 (2012).

<sup>9/</sup> DISH, through Wetterhorn Wireless L.L.C., was the second largest winner in total winning bids (\$912,939,410) and the largest winner in number of Priority Access Licenses won (5,492 licenses) in the CBRS auction. See News Release, *FCC Announces Winning Bidders of 3.5 GHz Band Auction*, FCC (Sept. 2, 2021), <https://docs.fcc.gov/public/attachments/DOC-366624A1.pdf>; *Auction of Priority Access Licenses in the 3550-3650 MHz Band Closes; Winning Bidders Announced for Auction 105*, Public Notice, 35 FCC Rcd 9287 (2020).

<sup>10/</sup> See *Auction of Flexible-Use Service Licenses in the 3.45-3.55 GHz Band for Next Generation Wireless Services; Comment Sought on Competitive Bidding Procedures for Auction 110*, Draft Public Notice, FCC-CIRC2103-04, ¶¶ 29-34 (draft rel. Feb. 24, 2021); Letter from Carolyn Roddy, Deputy Assistant Secretary for Communications and Information, NTIA, to the Hon. Ajit Pai, Chairman, FCC (dated Jan. 14, 2021), [https://www.ntia.doc.gov/files/ntia/publications/ntia\\_letter\\_to\\_fcc\\_chairman\\_re\\_estimated\\_costs\\_for\\_3450-3550\\_mhz\\_1-14-21.pdf](https://www.ntia.doc.gov/files/ntia/publications/ntia_letter_to_fcc_chairman_re_estimated_costs_for_3450-3550_mhz_1-14-21.pdf); 47 U.S.C. §§ 923(g), 309(j)(3)(F).

## TDD Synchronization is not Warranted

DISH suggests that, regardless of whether the Commission increases CBRS power levels, it should require time division duplex (“TDD”) synchronization across the 3 GHz bands. But a TDD synchronization mandate would presume the use of particular technologies or applications across the 3.45 GHz and CBRS bands, and the Commission has consistently structured its rules to be technology and service neutral. In any case, a TDD synchronization requirement is unnecessary. As T-Mobile has previously explained, industry routinely accomplishes coordination without a regulatory mandate – carriers have a demonstrated history of cooperating to ensure that all licensees can maximize the use of their assigned spectrum.<sup>11/</sup> That history supports the reasonable expectation that 3.45 GHz band licensees will engage in good faith information exchange and cross-band interference solutions upon request through the normal course of business operations. DISH has not provided any evidence to the contrary – it merely speculates that the Commission’s approach *may* not be strong enough to ensure TDD synchronization.<sup>12/</sup>

## 3.45 GHz Band Build-Out Requirements Should Be Maintained

It is no surprise that DISH, which has consistently delayed use of spectrum for which it is authorized, urges the Commission to delay performance obligations for the 3.45 GHz band.<sup>13/</sup> The Commission should reject DISH’s continued spectrum hoarding efforts. The premise of the Commission making the 3.45 GHz band available is to provide additional capacity for 5G networks.<sup>14/</sup> But the race to 5G will not be won by warehousing spectrum. Instead, the Commission is right to require that Americans receive the benefit of that spectrum as soon as possible while ensuring that carriers have reasonable time to deploy the spectrum after the development of international equipment standards. DISH is wrong when it asserts that there is no reason the performance requirements should be different for the 3.45 GHz band than it is for other segments of the 3 GHz band. The C-band performance requirements are longer because of the need for satellite operators to adjust their operations and clear the band. And the performance requirements for CBRS are longer because of the need to implement the complex sharing mechanisms necessitated by the use of SAS and Environmental Sensing Capabilities in the band.

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<sup>11/</sup> See, e.g., Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348 and AU Docket No. 21-62 (filed Mar. 5, 2021) (“T-Mobile 3.45 GHz *Ex Parte* Letter”).

<sup>12/</sup> See DISH *Ex Parte* Letter at 6.

<sup>13/</sup> See *id.* 7-8.

<sup>14/</sup> See *Facilitating Shared Use in the 3100-3500 MHz Band*, Second Report and Order, Draft Order on Reconsideration, and Order of Proposed Modification, FCC-CIRC2103-03, ¶ 1 (draft rel. Feb. 24, 2021) (“*Draft 3.45 GHz Order*”).

## A Uniform 40-Megahertz Limit is Appropriate for the 3.45 GHz Band

Finally, in an attempt to hobble providers that deploy spectrum quickly to provide service to customers, DISH proposes several additional mechanisms to limit the ability of T-Mobile and others from acquiring spectrum in the 3.45 GHz band auction.<sup>15/</sup> The Commission should reject this nakedly anti-competitive effort. As T-Mobile and others have consistently demonstrated, straightforward auction rules provide certainty that encourages participation.<sup>16/</sup> In contrast, application of any type of screen, or other competitive analysis, will create uncertainty that will dissuade participation in the auction – a potentially damaging result in view of the statutory need to satisfy a reserve price for the band – as well as delay deployment.

Further, DISH’s proposal is wholly unworkable and inconsistent with the Commission’s plan to initiate an auction of the 3.45 GHz band by early October 2021. In particular, DISH proposes a pre-auction “screening review.”<sup>17/</sup> But Commission spectrum analyses often take months – a period the Commission does not have prior to accepting applications to participate in the 3.45 GHz band auction. Moreover, Commission competitive analysis is conducted on a market-by-market basis. Accordingly, any evaluation that would determine whether a provider could generally “participate in the auction” would be contrary to long-standing Commission precedent to determine an appropriate level of spectrum holdings in a particular market. Such a review would also occur based on no information about what a provider may wish to acquire in the 3.45 GHz band. Providers often adjust their spectrum acquisition strategy during an auction based on, among other things, budgetary constraints and business plans. Requiring them to declare in advance where they *may* wish to acquire spectrum, without knowing the potential price of that spectrum, is inconsistent with Commission auction procedures and could raise anticompetitive and collusion concerns. And requiring the Commission to evaluate *potential* spectrum holdings would be a massive waste of administrative resources, particularly if bidders ultimately determine not to participate, which many sometimes do.

DISH provides no justification for any of its proposed solutions. For example, it fails to explain why 100 megahertz should be the trigger for a review of High Mid-Band Spectrum holdings. It presumably proposes this arbitrary number because it fits comfortably within this trigger. On the other hand, the proposed rules strike the right balance – imposing a 40-megahertz cap for four years – so that no one provider can dominate the auction or aggregate spectrum afterwards, while allowing all carriers to obtain spectrum to fill coverage and capacity requirements and helping ensure that the reserve price is met.

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<sup>15/</sup> See DISH *Ex Parte* Letter at 6-7.

<sup>16/</sup> See, e.g., T-Mobile 3.45 GHz *Ex Parte* Letter; Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 18-120 and AU Docket No. 20-429 (filed Feb. 18, 2021); see also, e.g., Letter from Alexi Maltas, SVP & General Counsel, CCA, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 19-348 and AU Docket No. 20-429 (filed Mar. 5, 2021).

<sup>17/</sup> See DISH *Ex Parte* Letter at 7.

***The Commission Should Reject AIA’s Proposal for Part 15 Experimental Operations***

In its recent *ex parte* letters, the Aerospace Industries Association (“AIA”) asks the Commission to reverse the position of the *Draft 3.45 GHz Order* regarding the protection of contractor testing and experimentation activities in the 3.45 GHz band. The Commission should reject this request. The AIA approach envisions a “coordination framework” created by a defense industry association to which commercial licensees would presumably be obligated to comply, with the threat that if commercial entities do not agree with the framework, the Commission will create one. This dramatic departure from the Commission’s usual Part 5 rules is not supported by the record and would diminish the value of the 3.45 GHz band for commercial licensees. In no other case are licensed users required to potentially acquiesce to the demands of secondary Part 5 operations, and AIA presents no reason why that should occur here. For example, AIA does not demonstrate why testing cannot occur where coordination is already required – in Cooperative Planning Areas (“CPAs”) and Periodic Use Areas (“PUAs”). Nor does it demonstrate that usual carrier practices of accommodating reasonable requests of Part 5 users will be unsuccessful. Moreover, the testing and experimentation that AIA seeks to protect (in areas outside CPAs and PUAs) may occur in heavily populated areas – precisely where additional 5G capacity is required. Encumbering 3.45 GHz use in these areas will threaten the Commission’s ability to satisfy the reserve price for the spectrum.

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Pursuant to Section 1.1206 of the Commission’s rules, a copy of this letter has been submitted in the record of the above-referenced proceedings. If there are any questions concerning this matter, please contact the undersigned directly.

Respectfully submitted,

/s/ Steve B. Sharkey

Steve B. Sharkey  
Vice President, Government Affairs  
Technology and Engineering Policy