Russell H. Fox
202 434 7483
rfox@mintz.com

701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004
202 434 7300
mintz.com

March 19, 2019

VIA ELECTRONIC FILING

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

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

GN Docket No. 18-122, *Expanding Flexible Use of the 3.7 GHz to 4.2 GHz Band*

Dear Ms. Dortch:

The C-Band Alliance ("CBA") proposal to hold a private sale of a public resource has not withstood public scrutiny, and the depth and breadth of public concern has only grown with time.[1/] As T-Mobile has demonstrated, the better approach is for the Commission to conduct an incentive auction for the 3.7-4.2 GHz band ("C-band").[2/] The CBA continues to resist this market-based solution, recently arguing that earth station registrants cannot be included in an incentive auction, as T-Mobile has proposed.[3/] But the CBA misinterprets the Communications Act (the "Act") and Commission precedent. The public interest favors the Commission exercising its discretion to include earth station registrants in a C-band incentive auction.

1/ *See, e.g.*, Letter from Brian M. Josef, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Mar. 7, 2019) ("Comcast March 7 *Ex Parte* Letter"); Letter from Barry J. Ohlson, Vice President, Regulatory Affairs, Cox Enterprises, Inc., to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, *et al.*, at 2 (filed Mar. 5, 2019) ("Cox March 5 *Ex Parte* Letter"); Letter from Nicole Tupman, Assistant General Counsel, Midcontinent Communications, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Feb. 25, 2019); Letter from Scott Blake Harris and V. Shiva Goel, Counsel to the Small Satellite Operators, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, *et al.* (filed Feb. 21, 2019); Letter from Pantelis Michalopoulos and Georgios Leris, Counsel for American Cable Association, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Feb. 12, 2019); Letter from Neal M. Goldberg, NCTA – The Internet and Television Association, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Feb. 8, 2019).

2/ *See* Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc., to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Feb. 15, 2019) ("T-Mobile Feb. 15 *Ex Parte* Letter").

3/ *See* Letter from Henry Gola, Wiley Rein LLP, Counsel for the C-Band Alliance, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122 (filed Mar. 7, 2019) ("CBA Letter").

Earth Station Registrations are Licenses Under the Communications Act

The CBA argues that the Communications Act prohibits earth station registrants from participating in an incentive auction for C-band spectrum. According to the CBA, Section 309(j)(8)(G) of the Act allows the Commission to conduct incentive auctions only with respect to authorizations designated as "licenses" and claims that receive-only earth station authorizations are not licenses under the Act.[4/] The CBA's interpretation of Commission authority is inconsistent with the plain wording of the Communications Act.

As the CBA recognizes,[5/] the Communications Act defines a "license" as an "instrument of authorization . . . for the use or operation of apparatus for transmission of energy, or communications, or signals by radio, *by whatever name the instrument may be designated by the Commission*."[6/] And the definition of "transmission of energy by radio" includes "both such transmission and all instrumentalities, facilities, and services incidental to such transmission."[7/] Receive-only earth stations are incidental to satellite operators' transmissions[8/] and are therefore "licenses" under Section 153(49) of the Act, regardless of the nomenclature used.

The CBA nevertheless asserts that the Commission has found that it would be "unreasonable" to argue that receiving facilities are incidental to radio transmissions.[9/] But, as discussed below, that statement was limited to the context of determining whether the Communications Act *required* all receive-only earth stations to obtain licenses. The Commission did not address whether receive-only earth stations registrations, in fact, qualify as licenses under the Act.

Moreover, even if receiving facilities are not considered "incidental" to radio transmissions, receive-only earth station registrations authorize the operation or use of an apparatus for "communications." Thus, as authorizations for the operation of an apparatus of communications, receive-only earth station registrations would likewise be "licenses" under the Act, regardless of the FCC's nomenclature.

4/ *See id.* at 2.

5/ *See id*.

6/ 47 U.S.C. § 153(49) (*emphasis added*).

7/ *Id*. § 153(57).

8/ *See, e.g.*, *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, Second Report and Order, 22 FCC Rcd 8776, ¶ 16 (2007) (finding television receivers to be "apparatus" that are "incidental to . . . transmission" of television broadcasts).

9/ *See* CBA Letter at 3.

By Making Registrations for Receive-Only Earth Stations Optional, the Commission Did Not Alter Their Status as Licenses

Contrary to the CBA's suggestion, the *1979 Deregulation Order* does not show that earth station registrants are not licensees.[10/] The *1979 Deregulation Order* merely eliminated "mandatory licensing" of receive-only earth stations in order to reduce regulatory burdens;[11/] it did not change their statutory status. Receive-only earth stations still had the *option* of being licensed in order to receive protection from interference.[12/] Moreover, the authorizations that were issued to those that elected to continue to receive them were *licenses*. And those that obtained licenses were – like any other Commission licensee – subject to the provisions of the Communications Act. As the Commission explained, "those stations which have already been *licensed* and those who choose to seek *licenses* in the future will be subject to our policies and procedures developed with regard to Title III licenses."[13/]

The Commission later changed its "optional licensing" procedures to a "registration program" for domestic receive-only earth stations.[14/] That step, however, was intended only to reduce administrative burdens, not to effect a substantive change in the rights and obligations that the receive-only earth station operators held.[15/] The Commission explained that "[t]he information

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10/ *See id.* at 2.

11/ *See Regulation of Domestic Receive-Only Satellite Earth Stations*, First Report and Order, 74 F.C.C.2d 205 (1979) ("*1979 Deregulation Order*"); *see also Transborder Satellite Video Services et al.*, Memorandum Opinion, Order and Authorization, 8 F.C.C.2d 258, ¶ 44 (1981) ("*1981 Transborder Order*") (explaining that the result of the *1979 Deregulation Order* was "to eliminate mandatory licensing for domestic receive-only satellite earth stations and to reduce regulatory burdens").

12/ *See 1979 Deregulation Order* ¶ 34; *1981 Transborder Order* ¶ 44 ("Under the new deregulatory scheme, receive-only earth station operators have the option of licensing their facilities (thereby gaining full interference protection) or operating their receive-only terminals without a license (no interference protection).").

13/ *1979 Deregulation Order* ¶ 36 (*emphasis added*); *see also 1981 Transborder Order* ¶ 44 ("Although the Commission concluded that it would be desirable and feasible to exempt individual receive-only earth stations from Title III licensing requirements, other regulatory requirements remain.").

14/ *See Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communications Services*, First Report and Order, 6 FCC Rcd 2806 (1991) ("*1991 Streamlining Order*").

15/ *See id.* ¶ 4 (noting that "a registration program would provide receive-only operators with interference protection while offering a simpler regulatory procedure"); *Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communications Services*, Notice of Proposed Rulemaking, 2 FCC Rcd 762, ¶ 48 (1986) (recognizing that the goal of protecting earth stations "can still be achieved by substituting a simpler registration

required for an application for registration would be the same as is currently required for a license application but the program would eliminate the issuance of a formal license."[16/] In addition, the Commission emphasized that "a registration program will afford the same protection from interference as would a license issued under our former procedure."[17/] The Commission's decision therefore squarely contradicts the CBA's argument that a receive-only earth station registration is substantively different from a license for purposes of the Commission's authority and operations.

Moreover, the CBA appears to ignore the absence of any material difference in the Commission's rules between earth station registrations and earth station licenses. Section 25.131, for instance, requires both applications for licenses for receive-only earth stations operating with certain non-U.S. licensed space stations *and* applications for registrations of receive-only earth stations to be submitted using FCC Form 312.[18/] And Section 25.130 requires applications for *transmitting* earth station licenses to be submitted on that same form.[19/] This commonality is in contrast to devices that are neither required, nor permitted, to secure any FCC authorization and therefore receive no interference protections.[20/]

While the Commission said in 2015 that receive-only earth station registrations "are neither construction permits nor station licenses,"[21/] that statement was limited to the agency's consideration of *pro forma* assignments and transfers of control. The Commission took no action in that proceeding to reverse, or suggest that it intended to reverse, the determination in the *1979 Deregulation Order* that Title III policies and procedures apply to receive-only earth station registrations.

The Commission's 2015 action is consistent with many other cases where the Commission has reduced administrative burdens on licensees without affecting their status as licensees. Indeed, the Commission has streamlined certain procedures for holders of wireless licenses without

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program to eliminate the issuance of the license and the associated administrative burdens on both applicants and the Commission").

16/ *1991 Streamlining Order* ¶ 4.

17/ *Id.* ¶ 7.

18/ *See* 47 C.F.R. § 25.131.

19/ *See id.* § 25.130.

20/ *See, e.g., id.* § 15.1(a) (stating that Part 15 of the FCC's rules "sets out the regulations under which an intentional, unintentional, or incidental radiator may be operated without an individual license"); *id.* § 15.5(b) (stating that Part 15 devices must not cause harmful interference and must accept interference).

21/ *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd 14713, ¶ 306 (2015).

stripping them of their characterization as licenses under Title III.[22/] And the Commission recently streamlined the procedures for reauthorizing satellite status when the license of a television satellite station is assigned or transferred.[23/] The CBA confuses the reduction of regulatory burdens with changing rights – something that has not occurred for receive-only earth station registrants.

The Public Interest Requires that Earth Stations Be Included in an Incentive Auction

As demonstrated above, earth station registrants are licensees under the plain wording of the Communications Act and relevant precedent. While Section 309(j)(8)(G) of the Act does not require that the Commission encourage all affected licensees to participate in an incentive auction, including earth station registrants in the competitive bidding process will promote competition and best capture the market participants who use the C-band spectrum as a part of their businesses.

First, satellite operators and earth station operators are two parts of a whole in a way that other licensees and their customers are not. For instance, as the Commission recently noted, "conditions are often imposed in satellite licenses that require the satellite licensee to ensure compliance with earth station power limits" and "earth station licensees are often required to comply with any other, relevant conditions in the satellite license as well."[24/] Satellite operators themselves recognize, and indeed boast about, the integration of their satellites and earth stations.[25/] In contrast, customers of wireless service providers, for example, have no obligation

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[22/] *See, e.g.*, 47 C.F.R. § 1.948(c)(1) (allowing wireless licensees to undergo certain *pro forma* transfers or assignments without requiring prior Commission approval); *see also, e.g.*, *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, Second Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 8874 (2017) (streamlining and harmonizing the FCC's license renewal and service continuity rules).

[23/] *See Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations et al.*, Report and Order, MB Docket No. 18-63 and MB Docket No. 17-105, FCC 19-17 (rel. Mar. 12, 2019).

[24/] *Further Streamlining Part 25 Rules Governing Satellite Services*, Notice of Proposed Rulemaking, IB Docket No. 18-314, FCC 18-165, ¶ 4 (rel. Nov. 15, 2018); *see also 1979 Deregulation Order* ¶ 22 ("Optimum earth station design permits small orbital spacing between satellites and also increases the flexibility of space station operators to reconfigure satellite traffic to satisfy changing service requirements.").

[25/] *See, e.g.*, *IntelsatOne Terrestrial Network*, Intelsat, http://www.intelsat.com/global-network/intelsatone/overview/ (last visited Mar. 17, 2019) (claiming that its terrestrial network "operates seamlessly" with its satellite technology); *Enterprise Broadband*, Eutelsat, https://www.eutelsat.com/en/services/data/enterprise-broadband.html (last visited Mar. 17, 2019) (asserting that its Eutelsat Connectivity services are based on the reliability of its satellites and exceptional terrestrial worldwide infrastructure and that the "seamless connection" of Eutelsat Connectivity is one of the key strengths of its solutions); *see also Why Satellite?*, Telesat, https://www.telesat.com/about-us/who-we-are/why-

to satisfy any conditions imposed on their providers' licenses, and the customers themselves are not licensees.

Second, as T-Mobile has explained, the protection of earth station operations is what limits potential terrestrial C-band use in an area.[26/] Earth station participation in an auction will therefore provide an incentive for satellite operators to relinquish their spectrum usage rights. For example, to the extent earth stations in an area no longer require protection, whether as a result of discontinuing operations or the use of alternative transmission media, satellite operators covering that area may be encouraged to relinquish their spectrum usage rights.

The CBA's Claims About the Number of Earth Stations are Overstated

The CBA argues that including more than 17,000 earth stations in an incentive auction "would exacerbate the holdout problem and add insurmountable complexity and delay."[27/] But the CBA's assertion regarding the number of registered earth stations is vastly inflated. At the time the *NPRM* in this proceeding was released, there were only approximately 4,700 earth stations registered or licensed in the FCC's International Bureau Filing System ("IBFS").[28/] In its comments in response to the *NPRM*, the CBA estimated that there were 16,500 deployed C-band earth stations.[29/] The CBA claimed that the significant increase in the number of registered earth stations from the time the *NPRM* was released to the time that its comments were submitted (roughly four months) was based on several factors.[30/] *First*, it argued that the number reflected new applications filed in IBFS, which the CBA alleged it was "regularly monitoring," following the announcement of the freeze on new earth stations, including registrations that had not yet been accepted by the Commission.[31/] *Second*, the CBA stated that it was "also aware of an additional 1,408 operational C-band earth stations that have not yet registered during the Commission's limited registration window, including many earth stations operated by federal government users."[32/] The CBA subsequently revised its estimate upward to 17,000 earth

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satellite (last visited Mar. 17, 2019) (claiming that its satellites provide "[c]onsistent frequency allocation" using earth station equipment).

26/ *See* T-Mobile Feb. 15 *Ex Parte* Letter at 4.

27/ CBA Letter at 4.

28/ *See Expanding Flexible Use of the 3.7 to 4.2 GHz Band, et al.*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, ¶ 15 (2018).

29/ *See* Comments of the C-Band Alliance, GN Docket No. 18-122, *et al.*, at 12 (filed Oct. 29, 2018) ("CBA Comments").

30/ *See* CBA Comments at 12; Reply Comments of the C-Band Alliance, GN Docket No. 18-122, *et al.*, at 10 (filed Nov. 28, 2018) ("CBA Reply Comments").

31/ *See id.* at 12; CBA Reply Comments at 10.

32/ CBA Comments at 12, Earth Station Annex (listing the "radio affiliate earth stations SES compiled from its customers and compared against the IBFS database of filed registrations").

stations to allegedly include earth station applications filed in IBFS since its initial comments were submitted.[33/]

The CBA has failed to explain how adding an unspecified number of new applications, including those that have not yet been accepted, to the more than 4,000 earth stations that had been registered or licensed at the time of the *NPRM* brings the estimate of earth stations to approximately 16,500, let alone 17,000. While the CBA provided a list of the 1,408 unregistered C-band earth stations in its "Earth Station Annex," adding that figure would not bring the total anywhere close to 17,000 earth stations.[34/] In fact, it would only amount to 5,408 earth stations, about one third of what the CBA estimated. Just like the rest of its proposal, the CBA's arguments do not add up.

The CBA's Proposal is Widely Opposed

The CBA claims that T-Mobile's opposition to the CBA proposal and T-Mobile's refined incentive auction proposal are intended to delay the deployment of 5G while its merger with Sprint is pending.[35/] But numerous parties – not just T-Mobile – oppose the CBA plan and agree that the secret market transactions proposed by the CBA are anticompetitive and unworkable. Indeed, the very parties that the CBA cites as "demonstrat[ing] strong opposition"[36/] to T-Mobile's proposal have recently stated just the opposite.

Comcast, for an example, has urged the Commission on several occasions to reallocate C-band spectrum through an auction mechanism because it is "superior" to the CBA's proposed approach, "which runs counter to the public interest and should be rejected."[37/] Cox similarly noted that it does not support the CBA's proposal because it "lacks significant details and ultimately calls for the FCC to abandon its critical obligation to equitably balance all interests in the band while determining the best use of the spectrum going forward."[38/] Observing that the CBA's proposal is contrary to several provisions of the Communications Act, Charter argued that the CBA's approach would "plunge the Commission into a legal quagmire that would delay

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33/ *See* CBA Reply Comments at 10.

34/ *See* CBA Comments at 12; CBA Reply Comments at 10.

35/ *See* CBA Letter at 1.

36/ *Id.* at 7.

37/ *See, e.g.*, Comcast March 7 *Ex Parte* Letter at 1; Letter from Brian M. Josef, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Feb. 22, 2019); Letter from Brian M. Josef, Comcast Corporation, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Mar. 1, 2019).

38/ Cox March 5 *Ex Parte* Letter at 2.

the availability of 5G."[39/] The Small Satellite Operators likewise explained that the CBA's proposal is "fatally flawed . . . unsustainable, unlawful, and unnecessary," adding that the Commission, not a private party, should be responsible for auctioning C-band spectrum.[40/] And, in direct contrast to the CBA's most recent claims that its proposal has garnered vast support, Charter pointed out that "the only entities supporting the CBA's proposal are the foreign satellite companies who stand to benefit from its adoption, companies who manufacture satellites and satellite equipment, and one of the largest wireless providers."[41/] Therefore, the CBA's attempt to distract the Commission with false claims about T-Mobile's motivations should be rejected.

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Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced docket. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Russell H. Fox

Russell H. Fox

Counsel to T-Mobile, USA, Inc.

39/ Letter from Elizabeth Andrion, Senior Vice President, Regulatory Affairs, Charter Communications, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, *et al.*, at 3 (filed Feb. 25, 2019) ("Charter Feb. 25 *Ex Parte* Letter").

40/ Letter from Scott Blake Harris, Counsel to the Small Satellite Operators, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, at 1 (filed Mar. 11, 2019); *see also* Letter from Nicole Tupman, Assistant General Counsel, Midcontinent Communications, to Ms. Marlene H. Dortch, Secretary, FCC, GN Docket No. 18-122, *et al.*, at 2 (filed Mar. 14, 2019).

41/ Charter Feb. 25 *Ex Parte* Letter at 3.