

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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| In the Matter of |) | |
| |) | |
| Amendment of the Commission's Policies and |) | IB Docket No. 06-160 |
| Rules for Processing Applications in the |) | |
| Direct Broadcast Satellite Service |) | |

COMMENTS OF MDS OPERATIONS, INC. AND RS ACCESS, LLC

MDS Operations, Inc. (“MDS Operations”) and RS Access, LLC (“RS Access”) file these comments in response to the Federal Communications Commission’s Second Notice of Proposed Rulemaking (“2nd NPRM”), which seeks comment on “proposed revisions to [the Commission’s] procedures and rules governing direct broadcast satellite (DBS) service using satellites in geostationary orbit” (“GSO”).¹ While MDS Operations and RS Access support steps to revitalize the 12.2-12.7 GHz band (“12 GHz band”), narrowly focusing the Commission’s overhaul efforts on DBS will restrict the Commission’s ability to “explor[e] new opportunities for flexible broadband use in the mid-band frequencies.”² This proceeding represents an opportunity to modernize the 12 GHz band as a whole and relieve all licensees in the 12 GHz band of the burdensome regulatory obligations that have left the band underutilized.

¹ *Amendment of the Commission’s Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service*, Second Notice of Proposed Rulemaking, IB Docket No. 06-160, FCC 18-157, ¶ 1 (rel. Nov. 13, 2018) (“2nd NPRM”).

² *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Notice of Inquiry, 32 FCC Rcd 6373, ¶ 6 (2017).

Furthermore, any rules that the Commission adopts regarding DBS service must protect Multichannel Video Distribution and Data Service (“MVDDS”) licensed operations.³

I. BACKGROUND

In December 2018, RS Access contracted to purchase and lease sixty MVDDS licenses in the 12 GHz band from MDS Operations. Shortly thereafter, RS Access and MDS Operations filed an assignment application with the Commission, which consented to the assignment on February 5, 2019.⁴ RS Access is currently deploying spectrum in the 12 GHz band to support intensive, point-to-multipoint data applications that may include: (1) two-way Wi-Fi extension service;⁵ (2) supplemental downlink capacity for broadband operations; (3) remote video monitoring and video delivery services; (4) software delivery to smart devices and systems; (5) support for facilities that require secure, “high-side” systems to receive data from less secure, “low-side” networks (*e.g.*, military installations, utilities); and (6) alarm and remote monitoring systems.

II. LIFTING BURDENSOME REGULATORY RESTRICTIONS IN THE 12 GHZ BAND WILL INCENTIVIZE DEPLOYMENT OF INNOVATIVE TERRESTRIAL BROADBAND SERVICES

DBS service operates in the 12 GHz band,⁶ which it shares on a co-primary basis with MVDDS and Non-Geostationary Orbit Fixed Satellite Service (“NGSO FSS”) through “a series of major operational constraints and complex rules that govern sharing and coordination among

³ See 2nd NPRM at ¶ 34 (seeking comment on issues related to “protection requirements among terrestrial [MVDDS] licensees and DBS operations at reduced spacings”).

⁴ See ULS File No. 0008485654.

⁵ In accordance with the Commission’s rules, RS Access would provide two-way services “using other spectrum or media for the return or upstream path.” 47 C.F.R. § 101.1407.

⁶ 2nd NPRM at n.1.

licensees.”⁷ MVDDS licensees must coordinate with and protect DBS licensees,⁸ coordinate with adjacent MVDDS licensees and co-channel MVDDS licensees in adjacent areas,⁹ and transmit only one-way wireless services,¹⁰ among other restrictions. These constraints on MVDDS, which the Commission has described as “very conservative limits” implemented to prevent interference with DBS operations,¹¹ have subsequently choked investment and stunted the deployment of innovative terrestrial services.¹² The Commission acknowledged the regulatory burdens’ impact on MVDDS licensees’ ability to deploy service when it granted them an extension of their buildout deadlines due to “a lack of viable, affordable equipment.”¹³ To date, only one MVDDS licensee – MDS Operations – has provided service, which required a waiver of certain MVDDS rules and use of unlicensed spectrum for the second link.¹⁴

⁷ Reply Comments of MDS Operations, Inc. and RS Access, LLC, IB Docket No. 18-315, at 3 (filed Mar. 13, 2019).

⁸ See 47 C.F.R. § 101.1440.

⁹ See 47 C.F.R. § 101.1421.

¹⁰ See 47 C.F.R. § 101.1407.

¹¹ *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation and NGSO of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, et al.*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, ¶ 43 (2002).

¹² See Reply Comments of MDS Operations, Inc. and RS Access, LLC, IB Docket No. 18-315, at 3 (“[I]nvestment-sapping restrictions have stymied MVDDS deployment in the United States.”).

¹³ See *Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, Order, 25 FCC Rcd 10097, ¶ 10 (WTB 2010).

¹⁴ See *MDS Operations, Inc. Request for Waiver of Certain Multichannel Video Distribution and Data Service Technical Rules for One Station in Sandia Park, New Mexico*, Order, 25 FCC Rcd 7963, ¶ 1 (WTB 2010) (granting conditional waiver of power limits to “encourage the deployment of MVDDS service”).

The Commission may now correct course, as the 2nd NPRM represents one component of a broader opportunity to modernize the 12 GHz band as a whole and remove obsolete regulations that hinder other 12 GHz band licensees' flexibility to deploy innovative new services. If "the FCC is looking to free up mid-band spectrum for wireless innovation,"¹⁵ it should focus on the 12 GHz band, which has the necessary bandwidth (500 megahertz) and favorable propagation characteristics to accommodate innovative, two-way terrestrial services. The MVDDS 5G Coalition has filed a pending Petition for Rulemaking that, if adopted, would contemplate use of the 12 GHz band for two-way mobile 5G services.¹⁶ Furthermore, the MVDDS 5G Coalition has repeatedly demonstrated that freeing up MVDDS for two-way, 5G use is feasible without harming other 12 GHz band licensees, including DBS providers.¹⁷ Granting the MVDDS 5G Coalition Petition would be a useful step towards securing U.S. leadership in the race to 5G.

III. THE COMMISSION SHOULD FOLLOW DBS PROVIDERS' LEAD AND SHIFT FOCUS TOWARD FUTURE BROADBAND DEPLOYMENT

MDS Operations and RS Access support the Commission's goal to "align DBS processing procedures with [its] recently streamlined processing procedures for GSO fixed-

¹⁵ *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Statement of Chairman Ajit Pai, 32 FCC Rcd 6373, 6389 (2017).

¹⁶ See Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (filed Apr. 26, 2016) ("MVDDS 5G Coalition Petition").

¹⁷ See Comments of MVDDS 5G Coalition, RM-11768, at 2 (filed June 8, 2016) (quoting attached study that finds "coexistence between MVDDS 5G operations and DBS receivers is possible with modest adjustments to MVDDS site locations and radiofrequency design parameters"); Reply Comments of MVDDS 5G Coalition, RM-11768, at 9-10 (filed June 23, 2016) (finding that separate study conducted in urban downtown environment "increases confidence that a notice-and-comment rulemaking proceeding would promote more intensive use of the 12.2-12.7 GHz band"); see also 2nd FNPRM at ¶ 34 (seeking comment on protection requirements for MVDDS licensees).

satellite service (FSS) satellites,”¹⁸ which will create a more uniform licensing scheme for similar services as well as reduce the Commission’s administrative burden and licensees’ regulatory burden.¹⁹ Given market realities, however, the Commission should evaluate whether more streamlined rules for DBS service will accomplish a stated goal of this proceeding – to increase use of 12 GHz band spectrum.²⁰

While MDS Operations and RS Access hold no opinion on the 2nd NPRM’s proposals that affect only DBS service (*e.g.*, processing new DBS service applications on a “first-come, first-served basis,” offering an options “two-step FCC/ITU license application process”),²¹ MDS Operations and RS Access are skeptical that more intensive DBS deployment is likely to occur. Since AT&T purchased DirecTV roughly two years ago, for example, DirecTV has lost 1.4 million subscribers, and AT&T is reportedly “bracing for cancellations this year that would cut into its 2019 operating profits by \$1 billion.”²² Having reckoned with this economic reality, AT&T Communications CEO John Donovan has stated that AT&T has “launched [its] last

¹⁸ 2nd NPRM at ¶ 1.

¹⁹ *See id.* at ¶ 3 (“DBS operations are similar to those of GSO satellite networks in the FSS.”).

²⁰ *See id.* at ¶ 1 (“This *Second Notice* is a step towards increased use of spectrum and orbital resources.”).

²¹ *See id.* at ¶¶ 9-11 (proposing to process DBS applications on a “first-come, first-served” basis), 20-22 (proposing to “extend the two-step process for GSO FSS operations in unplanned bands to DBS operations in planned bands”).

²² Drew FitzGerald, *AT&T Wants to be Big in Entertainment. First, It has a \$49 Billion Problem to Fix*, Wall Street Journal, Jan. 30, 2019, <https://on.wsj.com/2TdouWd>.

satellite.”²³ Instead of investing new resources on DBS, AT&T has said it will “focus on growing its online video business.”²⁴

AT&T’s shift to online video is part of a larger, industry-wide trend as Netflix, Hulu, Amazon, and other over-the-top services increase their share of the video market.²⁵ Both major DBS providers – AT&T and DISH – have created their own over-the-top video offerings.²⁶ As the Commission points out, “DBS subscribership is dropping in the United States as the marketplace for the distribution of video programming over the Internet continues to grow.”²⁷ As consumer preferences increasingly shift away from traditional pay-TV options (*e.g.*, cable, DBS) to online delivery of video programming, demand for terrestrial broadband increases. The 12 GHz band offers an opportunity to satisfy this growing demand for terrestrial uses. When contemplating future use of the 12 GHz band, the Commission’s proposals should “foster a competitive, dynamic, and innovative market for communications services through policies that promote the introduction of new technologies and services.”²⁸ Therefore, the Commission

²³ Ashley Rodriguez, *It’s the Beginning of the End of Satellite TV in the US*, Quartz (Nov. 30, 2018), <https://bit.ly/2EgmU1R>.

²⁴ *Id.*

²⁵ See Dana Feldman, *Pay TV Sees Mass Exodus as Cord-Cutters Jump More than 30% in 2018*, Forbes (July 24, 2018, 2:13 PM), <https://bit.ly/2Fns10u>.

²⁶ See AT&T, DIRECTV NOW, *available at* <https://soc.att.com/2IwELQY> (last visited Mar. 19, 2019); SlingTV, *available at* <https://bit.ly/1CDqzjR> (last visited Mar. 19, 2019).

²⁷ 2nd NPRM at ¶ 28.

²⁸ Chairman Ajit V. Pai, *Message from the Chairman*, Federal Communications Commission Strategic Plan 2018-2022, at i (Feb. 12, 2018), <https://bit.ly/2JB3uca>; *see also* Federal Communications Commission, Federal Communications Commission Strategic Plan 2015-2018, at 5 (Feb. 4, 2015), <https://bit.ly/2HG5qO8> (To promote economic growth and national leadership, the Commission will “[d]evelop and implement flexible, market-oriented spectrum allocation and assignment policies . . . which promote innovation, investment, jobs and consumer benefits.”).

should direct its attention toward spectrum policies that encourage terrestrial broadband deployment. Loosening restrictions on MVDDS will do precisely that.

IV. CONCLUSION

The Commission has the opportunity to reconceive use of the 12 GHz band and increase broadband deployment by considering the MVDDS 5G Coalition Petition. Liberalizing the service rules for DBS service *as well as* other services in the 12 GHz band would promote innovation as licensees, previously hamstrung by overly conservative limitations, could finally deploy prime mid-band spectrum toward next-generation services. Therefore, MDS Operations and RS Access encourage the Commission to grant the MVDDS 5G Coalition Petition in conjunction with the proposals outlined in the 2nd NPRM.

Respectfully submitted,

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