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Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On April 28, 2020, Colleen King of Charter Communications, Inc.; Brian Josef of Comcast Corporation; Barry Ohlson of Cox Enterprises, Inc.; Margaret Tobey of NBCUniversal; Keith Murphy, Martha Heller, Joseph St. Jean, Stuart Baillie, and Frank Governale of ViacomCBS; Susan Fox and Amy Klein of The Walt Disney Company and ESPN, Inc.; Patrick McFadden, Alison Neplokh, and Robert Weller of the National Association of Broadcasters; and Jared Sher, Jacqueline Clary, Neal Goldberg, and myself of NCTA – The Internet and Television Association (NCTA) met by conference call with Matthew Pearl, Paul Powell, Anna Gentry, and Becky Tangren of the Wireless Telecommunications Bureau (WTB); Margaret Wiener of the Office of Economics and Analytics; and Jim Schlichting of the International Bureau.

During the call, we thanked Commission staff for moving forward quickly with the preliminary cost catalog of relocation expenses and for providing stakeholders with the opportunity to comment on the cost estimates, including lump sum payment categories and amounts.¹ We then discussed C-band transition and reimbursement issues, including:

Lump Sum Payment. We highlighted the importance of quickly establishing a lump sum payment amount, even if WTB must do so without the benefit of input from the Clearinghouse, which likely will not be operational for several more months. As the Bureau works toward a lump sum, we urged the Bureau to consider costs for, among other things, professional services; hardware and software; and potential cost impacts resulting from supply chain disruptions due to the COVID-19 pandemic. We also requested clarification that as long as an earth station was in

¹ See *Wireless Telecommunications Bureau Seeks Comment on Preliminary Cost Category Schedule for 3.7-4.2 GHz Band Relocation Expenses*, Public Notice, GN Docket No. 18-122, DA 20-457 (rel. Apr. 27, 2020).

operation and registered on the required dates, the operator is eligible for the lump sum payment, even if the earth station operator begins transitioning earth stations before the lump sum payment is established by Public Notice. We noted that the Report & Order and draft Cost Catalog suggest that the lump sum would apply per antenna, rather than per call sign, but requested confirmation.

Timing for Reimbursable Costs. We noted that earth station operators need to know when they can begin transitioning and incurring costs (including soft costs for engineering, consulting, and legal help) with confidence that they will be reimbursed. We inquired whether WTB will establish a specific window of time within which transition costs incurred by earth station operators are deemed reimbursable.

Entities Entitled to Reimbursement. As the Report & Order contemplates,² in some cases, entities other than an incumbent space station operator or incumbent earth station operator may incur reimbursable transition costs. We noted that the reimbursement process would be easier, faster, and more cost-effective if these entities submit their own receipts for reimbursement rather than have a third party submit such receipts on their behalf.

Planning in the Case of Overlay Licensee Default. We asked what would happen if overlay licensees default and fail to pay their assigned share of relocation costs, resulting in a shortage of funds. We emphasized the importance of ensuring that earth station operators' relocation costs are reimbursed by the Clearinghouse in a timely way in the case of overlay licensee default.

Transition Issues. We noted the need for a definitive list that associates earth stations with the space station operators electing accelerated relocation that will be responsible for “provid[ing] a turnkey solution” for the transition of the earth stations that do not elect to receive a lump sum payment.³ We also noted the importance of ensuring that space station operators electing accelerated relocation continue to keep in contact with earth station operators electing a lump sum payment, particularly regarding such issues as their decision to elect accelerated relocation and the filing and acceptance of their certification of accelerated relocation.

Transportable/Occasional Use Earth Stations. We also discussed content companies' continued need to access the 3.7-4.0 GHz band on a secondary basis in certain locations to produce telecasts of live sporting events. Production teams operating transportable/occasional use earth stations receive content from C-band downlinks and insert that content into programming created onsite. These earth stations serve the public interest by enabling live coverage of highly popular major sports events.

² *Expanding Flexible Use of the 3.7-4.2 GHz Band*, Report and Order and Order of Proposed Modification, GN Docket No. 18-122, FCC 20-22 ¶¶ 260, 263 (rel. Mar. 3, 2020) (Report & Order).

³ *Id.* ¶ 292.

Programmers will need continued access to the 3.7-4.0 GHz spectrum because they will not be able to migrate all live event operations to spectrum above 4.0 GHz. Programming network engineers have explained that it would be difficult if not impossible to coordinate uplinks in the corresponding transmit frequency band (5.925-6.425 GHz) with downlinks in a band as narrow as the 200 MHz that otherwise will remain available for incumbent C-band operations. Unlike most earth station operations that are receive-only and can be coordinated and pointed once and then operated in a stable frequency environment (barring an unforeseen event), transportable/occasional use earth stations must be coordinated quickly in a new and often crowded terrestrial frequency environment. Having a wider range of C-band frequencies available is essential to identifying the right frequency that will work at a given location for a given event.

The Report & Order appears to contemplate that program networks could seek special temporary authority (STA) if and when they require access to spectrum to facilitate live event production.⁴ But given that tens of thousands of live sporting events are produced relying upon transportable/occasional access to the C-Band in the United States each year, seeking STA for each and every event – many of which would contain nearly identical information – would be incredibly burdensome on program networks and on FCC staff.

To permit program networks to continue to serve the public and to minimize the administrative burden of tens of thousands of STA requests, the Commission should establish a reasonable framework to accommodate transportable/occasional use of earth stations in the 3.7-4.0 GHz spectrum. There are several paths that the Commission could take to establish this type of framework. But it is important to note that no accommodation would threaten 5G service or the transition envisioned by the Report & Order. Since any program network use of the 3.7-4.0 GHz spectrum would be on a secondary, non-interfering basis, and would be downlink only, new wireless services would not be harmed.

First, the Commission could establish a “deemed granted” regime for STA applications that satisfy certain objective requirements,⁵ including (a) operation only at a designated set of sports-venue facilities, (b) operation only within a time-limited period before and after a

⁴ *Id.* ¶ 151 n.421.

⁵ *See, e.g.*, 47 C.F.R. § 1.948(j)(2) (providing that certain applications are “deemed granted” upon filing); *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Report and Order, 19 FCC Rcd. 17,503, 17,554-56, 17,557 ¶¶ 101-03, 108 (2004) (adopting a “deemed granted” rule for certain applications for assignment or transfer of control of Wireless Radio Service licenses); *see also Comprehensive Review of Licensing and Operating Rules for Satellite Services*, Second Report and Order, 30 FCC Rcd. 14,713, 14,810 ¶ 305 (2015) (adopting rule to deem certain satellite applications as granted one business day after filing); *Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd. 2336, 2348 ¶ 28, 2356 ¶ 53 (2017) (adopting streamlined procedure for qualifying STA applications and making certain spectrum leasing applications subject to immediate processing and approval).

scheduled televised event, and (c) operation on a secondary basis without interference protection. Under this approach, any conforming application would be deemed granted 24 hours after the application is filed, unless the Commission finds specific reason to hold the application for further review. In a similar fashion, the FCC could create a presumption in favor of granting any STA application that meets the objective criteria.⁶ Either of these approaches would ensure that live sports productions could continue without interruption, in a manner consistent with the Report & Order, and without constraining either the Commission's limited resources or new 5G services.

Alternatively, the Commission could grant a blanket waiver⁷ or exercise its forbearance authority with respect to its rules that otherwise reserve the 3.7-4.0 GHz band for wireless broadband use,⁸ on a very limited basis so as to allow only secondary, non-interfering, occasional use by programming networks at live sporting events for limited durations of time.

Any of these paths would serve the public interest by ensuring that programmers can continue to produce the high quality, on-location sports programming that American viewers love, without inhibiting the rollout of 5G or the transition contemplated by the Report & Order. And any of these options would be far superior to a regime in which networks are required to submit, and the Commission to process, tens of thousands of STA applications every year, potentially overwhelming Commission staff and disrupting the presentation of some of America's most popular programming.

Please address any questions regarding the foregoing to the undersigned.

Sincerely,

/s/ Danielle J. Piñeres

Danielle J. Piñeres

cc: Matthew Pearl
Paul Powell
Anna Gentry
Becky Tangren
Margaret Wiener
Jim Schlichting

⁶ See, e.g., 47 C.F.R. § 51.230(a) (providing that certain technology uses are presumptively acceptable under qualifying circumstances); see also *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order, 14 FCC Rcd. 20912, 20998 ¶ 195 (rel. Dec. 9, 1999) (adopting a presumption of acceptability for deployment of loop technology under certain circumstances).

⁷ See 47 C.F.R. § 1.3.

⁸ See 47 U.S.C. § 160(a).