June 4, 2019

VIA ELECTRONIC FILING

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

Re: ***Promoting Investment in the 3550-3700 MHz Band***
GN Docket No. 17-258

Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band
GN Docket No. 12-354

Ex Parte Communication

Dear Ms. Dortch:

The undersigned associations and companies write to express, in the strongest of terms, their policy, operational, and legal objections to AT&T's proposed creation of a new Category C antenna in the Citizens Broadband Service ("CBRS") that would permit Citizens Broadband Service Devices ("CBSDs") to operate with a maximum EIRP of 62 dBm/10 MHz. Particularly now, on the verge of Initial Commercial Deployments ("ICD") and General Authorized Access ("GAA") use of the band, AT&T's "questions concerning whether the Commission would entertain" such a proposal should be met with a resounding "NO."[1]

Allowing CBSDs to operate with an EIRP of 62 dBm/10 MHz – *31 times the maximum EIRP permitted under existing rules* – would wreak havoc on CBRS. First, increasing power would result in larger Priority Access License ("PAL") Protection Areas and foreclose opportunistic GAA for a variety of uses cases other than the traditional cellular deployments that AT&T envisions. That result would be contrary to the balanced policies the Commission adopted in 2015 and re-confirmed in 2016 and 2017.

Second, operation at higher power levels near the coastlines and near inland military facilities would be heavily constrained by the need to protect the Environmental Sensing Capabilities ("ESCs"), which ensure protection of fixed and shipborne military users. Higher power would also have a greater impact on Dynamic Protection Areas ("DPAs"), and significantly increase the distance from the coastline where DPA activation can impact service. Detailed NTIA and DoD study and analysis would be needed to assess the much greater interference impact of higher powered CBSDs in the band. The DPA neighborhood consideration distances would have to be significantly increased for higher powered CBSDs, which would have very significant implications on the processing load for each SAS (conditions

[1] Letter from Stacey Black, Assistant Vice President, Federal Regulatory – Spectrum AT&T, to Marlene H. Dortch, Secretary, FCC, GN Docket Nos. 17-258 and 12-354 (filed May 17, 2019).

under which they were never tested). While the former coastal exclusion zones have been optionally replaced by DPAs, only three Spectrum Access System ("SAS") operators to date have ESCs. Competing SASs without DPAs will, under this proposal, be limited to serving a smaller inland area (due to the need for much larger exclusion zones), which would unfairly impact their business and operations.

Third, higher power levels would also create additional interference issues for both base station and user equipment. The current regulations limit out-of-channel signal levels to low levels, because there are no guard bands in CBRS, and creating them would further foreclose GAA and PAL operation. Higher power levels with the same out-of-channel levels would be more difficult to achieve. Even if out-of-channel signals could be controlled, the higher power levels could potentially cause more interference to user equipment operating on adjacent channels. The current balance of PAL and GAA operation depends upon not requiring guard bands. A 15 dB increase in signal power, however, would upset that balance. This would leave very little room for GAA operations, and potentially none in areas where satellite incumbents operate below 3700 MHz. Furthermore, time division duplex (TDD) systems are known to be highly susceptible to interference from systems using differing air interface technology or differing TDD frame configurations (as is very likely to occur in practice due to different user needs), and the proposed power increase will wreak havoc and cause significantly increased interference among both GAA users and PAL users due to these issues. The current Part 96 rules properly address these concerns by reasonably limiting radiated power levels for the band, which was intended to be a small cell (i.e., high capacity/high frequency reuse) band that benefits a large number of parties.

Finally, AT&T's proposal – submitted just as the band is ready to be commercialized – seeks to undermine the regulatory framework the Commission has adopted and re-confirmed on multiple occasions. Numerous companies have invested tens of millions of dollars in developing innovative new broadband deployment approaches that would be significantly harmed by the reduced spectral availability and interference impacts caused by the AT&T proposal. There is no functional difference between AT&T's proposed Category C CBSD and the existing Category B CBSD, only a higher power level for what is essentially Category B operation. In 2016, the Commission refused to increase the maximum power level for Category B CBSDs beyond the maximum power level it had established for Category B rural antennas, stating that:

> However, we do not agree that the maximum EIRP for Category B CBSDs should be increased to 49 dBm/10 MHz in non-rural areas and 56 dBm/10 MHz in rural areas as requested by several petitioners. While we see the merit in increasing the maximum power available to network operators using Category B CBSDs in non-rural areas, we believe that an increase to 47 dBm/10 MHz to match the level permitted for rural CBSDs will adequately address the concerns raised by Petitioners *without negative effects on the interference environment in the band.*

> This change represents a significant increase in power for non-rural applications with a corresponding potential for more coverage area for each CBSD.[2]

The following year, in its October 2017 Order Terminating Petitions, the Commission correctly rejected T-Mobile's proposal to allow increased power for non-rural Category A and all Category B CBSDs in non-rural areas. The Commission unanimously concluded that:

> This T-Mobile request involves revisiting the balance the Commission struck in establishing the spectrum sharing framework between incumbent users, including federal radiolocation users, and the new users in the band. Integral to this balance was the Commission's decision not to further increase the EIRP limits beyond the modifications it made in 2016, and we find no compelling reason to revisit those limits—or the balance struck in the sharing framework—here. . . . *Apart from that, the assessment offers nothing new and material to our analysis; rather, it relies on old information, assumptions, and arguments that the Commission already considered and rejected when it declined on reconsideration to raise the EIRP limits to the same levels T-Mobile requests here. Additionally, T-Mobile's proposals would upset the balance the Commission struck between stakeholders in the band, particularly with respect to federal incumbents.* Finally, the record shows that there has been significant investment related to SAS and ESC certification in reliance on the current power levels to enable sharing. *We find that this progress provides evidence that the Commission's approach has provided a workable framework for all stakeholders*, and we conclude that T-Mobile's proposal would undermine that progress by, for instance, requiring additional features in the SAS and ESC and requiring the Commission to reconsider the size of the exclusion zones.[3]

Against this backdrop of the Commission's prior determinations on these same issues not just once, but repeatedly and in multiple stages of this proceeding, AT&T's proposal amounts to a petition for reconsideration – albeit one that reiterates arguments already considered and rejected in this same proceeding,[4] and one that was filed more than a year past the statutory deadline for such submissions.[5] Thus, even putting aside the proposal's significant policy and

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[2] *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, Order on Reconsideration and Second Report and Order, 31 FCC Rcd 5011, 5032 (2016) (emphasis added) (citation omitted).

[3] *Promoting Investment in the 3550-3700 MHz Band*, Notice of Proposed Rulemaking and Order Terminating Petitions, 32 FCC Rcd 8071, 8093-94 (2017) (emphases added) (footnotes and citations omitted).

[4] *See* 47 C.F.R. § 1.429(l)(3) (providing for the dismissal of petitions for reconsideration that "[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding").

[5] *See* 47 U.S.C. § 405(a) ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of."); 47 C.F.R. § 1.429(d) (same).

operational flaws, it should be dismissed on legal procedural grounds.[6]

At this stage, on the verge of ICD and commercial GAA use, AT&T's proposal could be even more disruptive than T-Mobile's. The Commission has established a "workable framework" for all stakeholders – incumbents, rural broadband providers, neutral host networks, private broadband networks, the Internet of Things and a host of other use cases. It should be noted that several of these use cases involve 5G air interface technologies. AT&T's proposal would severely undermine these uses, destroy investment, limit innovation and convert the CBRS band into something more closely resembling the "command and control" regulatory model the Commission has many times rejected.

Pursuant to Section 1.1206 of the Commission's Rules, this letter is being filed in ECFS in the above-referenced dockets. Please do not hesitate to contact the undersigned with any questions.

Respectfully submitted,

Altice USA

American Petroleum Institute

Frontier Communications

Motorola Solutions, Inc.

NCTA – The Internet & Television Association

Windstream

Wireless Internet Service Providers Association

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[6] *See, e.g.*, *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, 32 FCC Rcd. 10988 ¶ 166 (2017) (rejecting on reconsideration arguments that "were fully considered and rejected by the Commission" in a prior order in the same proceeding) (citing 47 C.F.R. § 1.429(l)(3)); *Review of Foreign Ownership Policies for Broadcast, Common Carrier and Aeronautical Radio Licensees Under Section 310(b)(4) of the Communications Act of 1934, As Amended*, Order on Reconsideration, 32 FCC Rcd. 4780 ¶¶ 8-10 (MB 2017) (dismissing a petition for reconsideration after finding that it merely "relies on arguments that the Commission fully considered and rejected" earlier in the same proceeding) (citing 47 C.F.R. § 1.429(l)(3)); *Ass'n of Coll. & Univ. Telecomm. Admin., Am. Council on Educ., and Nat'l Ass'n of Coll. & Univ. Bus. Officers Petition for Clarification*, Memorandum Opinion and Order, 8 FCC Rcd. 1781 ¶ 5 (1993) (dismissing a "Petition for Clarification," because its substance revealed that it amounted to "a petition for reconsideration nearly nine months past the statutory deadline," and noting that the Commission "lack[s] authority to extend or waive the statutory 30-day filing period specified in Section 405").

cc: Julius Knapp
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