

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

In the Matter of)	
)	
Partitioning, Disaggregation, and Leasing of)	WT Docket No. 19-38
Spectrum)	

REPLY COMMENTS OF RS ACCESS, LLC

RS Access, LLC (“RS Access”) files these reply comments in response to the Federal Communications Commission’s Notice of Proposed Rulemaking (“NPRM”) seeking comment on potential changes to the Commission’s partitioning, disaggregation, and leasing rules.¹ RS Access urges the Commission to adopt rules that would permit licensees, including Multichannel Video and Data Distribution Service (“MVDDS”) licensees operating in the 12.2-12.7 GHz band (“12 GHz band”), to disaggregate and aggregate spectrum as well as partition or aggregate license areas. Increasing the flexibility of MVDDS licensees and similarly situated parties to organize their licenses based on the needs of a dynamic commercial wireless market would reduce compliance costs, simplify secondary market transactions, and “free up mid-band spectrum for wireless innovation,”² thereby benefitting consumers and businesses alike.

¹ See *Partitioning, Disaggregation, and Leasing of Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 19-38, FCC 19-22 (rel. Mar. 15, 2019) (“NPRM”).

² *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Statement of Chairman Ajit Pai, 32 FCC Rcd 6373, 6389 (2017).

I. Permitting MVDDS licensees to disaggregate their spectrum holdings will increase small and rural carriers' access to spectrum.

Under the Commission's rules, MVDDS licensees may partition spectrum but are prohibited from disaggregating spectrum.³ MVDDS licensees currently share the 12 GHz band on a co-primary basis with Direct Broadcast Satellite ("DBS") and Non-Geostationary Orbit Fixed-Satellite Service ("NGSO FSS") operations. Citing the co-primary allocations in the band, the FCC prohibited spectrum disaggregation on grounds that "the increase in possible interference [was] too great" and that "permitting disaggregation would make it difficult to determine which licensee is causing the interference problem."⁴ Neither of these factors applies today. Changes in technology play an especially important role in the Commission's need to revisit its 2002 decision to prohibit the disaggregation of MVDDS spectrum.

At the physical layer, MVDDS equipment has become much easier to deploy and align. For example, new equipment has narrower, targeted beam apertures that allow for highly focused links, and current-generation transmitters allow for a high degree of customization and can create dedicated bandwidth for each customer site. At the software layer, MVDDS licensees have many more tools to identify, avoid, and (if necessary) remediate interference than existed nearly twenty years ago. Even under the Commission's cumbersome MVDDS coordination procedures,⁵ the global availability of high-resolution airborne imagery throughout the United States has made site access and coordination extremely manageable. Likewise, the ability of

³ See 47 C.F.R. § 101.1415(a) ("MVDDS licensees are permitted to partition licensed geographic areas along county borders (Parishes in Louisiana or Territories in Alaska). Disaggregation will not be permitted by MVDDS licensees in the 12.2-12.7 GHz band.").

⁴ *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation 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, ¶ 184 (2002) ("MVDDS Order").

⁵ See 47 C.F.R. § 101.1440 (requiring MVDDS coordination with DBS).

licensees to track and manage their spectrum holdings has radically improved. When the Commission adopted its prohibition on disaggregation of MVDDS spectrum in 2002, “Clippy,” the unsolicited paper clip office assistant, was still making appearances in Microsoft Excel, and datasets were limited to 16,384 rows. By comparison, today’s commercial spreadsheets regularly handle datasets of more than 1 million rows and feature more advance features that allow easy access to information. Concerns about equipment performance or tracking that may have existed in 2002, when the Commission adopted its MVDDS rules, are no longer relevant in 2019. Multiple generations of equipment improvements and the advent of free or off-the-shelf software allow a licensee to identify, track, and manage whatever disaggregation a spectrum licensee might adopt.

While the Commission has expanded flexible-use licensing and steadily increased access to tools that make government-issued licenses more relevant to the commercial marketplace,⁶ the rules governing MVDDS reflect a technology landscape that is more than 17 years old. When it implemented the MVDDS rules in 2002, the FCC acknowledged that “flexible” partitioning rules create incentives “by which smaller or newly formed entities can gain access to the broadband wireless market.”⁷ This principle equally applies to disaggregation. Relieving MVDDS licensees of the prohibition on disaggregation would provide MVDDS licensees with additional flexibility to achieve the Commission’s goals, namely “to close the digital divide and to increase spectrum access by small and rural carriers.”⁸

⁶ See *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Order and Notice of Proposed Rulemaking, 33 FCC Rcd 6915, ¶ 2 (2018) (“[W]e are pursuing the joint goals of making spectrum available for new wireless uses while balancing desired speed to the market [and] efficiency of use.”).

⁷ *MVDDS Order* ¶ 180.

⁸ *NPRM* ¶ 1.

As RS Access has stated in other proceedings, the 12 GHz band “has the necessary bandwidth (500 megahertz) and favorable propagation characteristics to accommodate innovative, two-way terrestrial services.”⁹ Small and rural carriers, however, may not need – or be able to afford – 500 megahertz in a given county. While small and rural carriers could ostensibly purchase mid-band spectrum from other licensees, the “all-or-nothing” nature of purchasing spectrum from MVDDS licensees on a county (or greater) basis limits the supply of mid-band spectrum available to small and rural carriers. The Commission’s prohibition on disaggregation artificially increases the price for mid-band spectrum, discouraging investment in (and use of) the 12 GHz band by small and rural carriers. By extension, these disincentives limit “new opportunities for flexible broadband use in the mid-band frequencies . . . well-suited for next-generation wireless services”¹⁰ and harm competition. Providing MVDDS licensees with the ability to disaggregate their holdings would increase the likelihood that small and rural carriers could invest in mid-band spectrum, capitalize on the 12 GHz band’s favorable propagation characteristics, offer robust mobile broadband or innovative 5G services, and increase competition.

II. Partitioning and disaggregation rules should permit aggregation of licenses that were not previously partitioned or disaggregated.

RS Access agrees with CTIA that “the Commission should adopt a simple, uniform process by which licensees can easily and quickly notify Commission staff that a licensee has reaggregated its license.”¹¹ Such a process should also apply to MVDDS licensees. By

⁹ Comments of MDS Operations, Inc. and RS Access, LLC, IB Docket No. 06-160, at 4 (Mar. 25, 2019).

¹⁰ *Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Notice of Inquiry, 32 FCC Rcd 6373, ¶ 6 (2017).

¹¹ Comments of CTIA, WT Docket No. 19-38, at 20 (June 3, 2019).

standardizing the process, the Commission also would reduce the number of issued licenses. Reducing the number of unnecessarily issued licenses would ease licensees' regulatory and administrative burdens (*e.g.*, "construction requirements, renewal demonstrations, continuous service requirements, and the need to maintain up-to-date information in ULS").¹² These burdens impose unnecessary costs on the licensee, diverting service providers' attention and resources away from investing in their networks and providing more robust mobile broadband or next-generation wireless services.

These regulatory and administrative burdens also "hamper the development and use of secondary spectrum markets" by imposing transaction costs on buyers and sellers.¹³ These transaction costs make it more difficult for a buyer and seller to negotiate the "ideal allocation of spectrum rights."¹⁴ By increasing licensees' flexibility (including MVDDS licensees' flexibility) to disaggregate or aggregate spectrum and partition or aggregate license areas, the Commission can reduce unnecessary, inefficient transaction costs and effectively "catalyz[e] [the] secondary markets."¹⁵

RS Access stresses that the Commission's rules should not restrict aggregation to instances where the licensee is merely reaggregating previously disaggregated or partitioned spectrum. Instead, the rules should permit the aggregation of licenses that were *not* previously disaggregated or partitioned, provided a licensee has satisfied the substantial service requirements for each of the licenses. Increasing licensees' flexibility to aggregate spectrum or geography, regardless of a license's history, would increase licensees' ability to efficiently

¹² *Id.* at 13-14.

¹³ Comments of Google LLC, WT Docket No. 19-38, at 7 (June 3, 2019) ("Google Comments").

¹⁴ Comments of Comcast Corporation, GN Docket No. 17-258, at 13 (Dec. 28, 2017).

¹⁵ Google Comments at 8.

maximize their spectrum holdings. These benefits would extend to all stakeholders in the secondary market, including small and rural carriers.

The Commission has rightly expressed concern that unscrupulous licensees might use partitioning and disaggregation to diminish or evade otherwise binding construction obligations.¹⁶ For this reason, any flexibility the Commission grants to licensees to partition and disaggregate their spectrum must have no effect on the population or coverage requirements that any given licensee must meet as a term of their license. While parties can debate measures to combat potential evasion of buildout obligations, no concerns about evasion of existing deployment obligations occur when “the licensee has *already* met its construction obligations.”¹⁷ At a minimum, therefore, a licensee that has fully satisfied all elements of its substantial service showing should be permitted to aggregate as well as disaggregate and partition its Commission-issued spectrum licenses.

III. CONCLUSION

No reasonable basis exists to withhold the same disaggregation, partitioning, or aggregation rules that apply to other terrestrial wireless services from operators in the MVDDS band. The Commission’s current disaggregation policies have artificially restricted the supply of spectrum by imposing regulatory and transactional costs on both licensees and *potential* licensees. These policies have hampered the secondary market’s development and, by extension, discouraged competition from small and rural carriers.

¹⁶ See *NPRM* ¶ 29 (“One potential disadvantage of allowing reaggregation is that carriers may attempt to use it to avoid construction requirements.”).

¹⁷ *Id.* (emphasis added).

To maintain U.S. leadership in 5G, Chairman Pai has identified the need to make spectrum more available and modernize outdated regulations.¹⁸ In this proceeding, the Commission has an opportunity to do both, especially by refreshing outdated MVDDS disaggregation rules. Accordingly, RS Access urges the Commission to adopt rules that would permit licensees – including MVDDS licensees – to disaggregate and aggregate spectrum or partition and aggregate license areas. Applying current-generation rules to MVDDS would place MVDDS licensees on equal footing with other operators in the market. Updated rules would also create much-needed flexibility for licensees to maximize the value of their spectrum holdings and sell spectrum to potential licensees that value it more highly. These efficiencies would benefit all stakeholders, including small and rural carriers, and therefore serve the Commission’s “continuing efforts to close the digital divide and to increase spectrum access by small and rural carriers.”¹⁹

Respectfully Submitted,

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¹⁸ See Chairman Ajit Pai, *Remarks of FCC Chairman Ajit Pai at the Mobile World Congress Latin American Dialogue Roundtable*, <https://docs.fcc.gov/public/attachments/DOC-356374A2.pdf> (Feb. 27, 2019).

¹⁹ *Id.* ¶ 1.