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SUBMITTED VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20054

RE: *Ex Parte* Presentation of Lockheed Martin Corporation, Use of
Spectrum Bands Above 24 GHz for Mobile Radio Services, et al.;
GN Docket No. 14-177, IB Docket Nos. 15-256 & 97-95,
RM-11664, and WT Docket No. 10-112

Dear Ms. Dortch:

Lockheed Martin Corporation (“Lockheed Martin”) writes here to express its support for the principal points regarding the legal status of the fixed-satellite service (“FSS”) in the 27.5-28.35 GHz frequency band (the “28 GHz band”) that were made by ViaSat, Inc. (“ViaSat”) in the latter’s July 1, 2016 written *ex parte* submission in the above-referenced proceedings.¹ The Commission is poised soon to make a determination on whether, and if so how, to introduce Upper Microwave Flexible Use Service (“UMFUS”) transmitters into the 28 GHz band and into the 37.5-38.6 GHz and 38.6-40 GHz bands (“the 37/39 GHz bands”) – all of which are presently allocated on a co-primary basis for FSS use.

In its own June 24, 2016 *ex parte* presentation, Lockheed Martin demonstrated that the international implications of aggregate interference from UMFUS to FSS satellite receivers – in particular, the treaty obligations of the United States under the International Radio Regulations – have not been adequately addressed in this proceeding.² Proper resolution of the U.S. treaty obligations issue involves the whole of the U.S. Government, not just the Commission, and poses a formidable challenge to the achievement of regulatory certainty through any redesignation of the 28 GHz band for UMFUS use in the United States. Lockheed Martin called

¹ See Letter dated July 1, 2016, from J. Janka and E. Park, counsel for ViaSat, to Chairman Wheeler and the Commissioners of the Federal Communications Commission, in GN Docket No. 14-177, *et al.* (“ViaSat Letter”).

² See Letter dated June 24, 2016, from J. Warren, Vice President, Technology Policy & Regulation, Trade & Regulatory Affairs, Lockheed Martin Corp., to R. Dortch, Secretary, Federal Communications Commission, in GN Docket No. 14-177 (“Lockheed Martin Letter”). Lockheed Martin only submitted its June 24 letter into GN Docket No. 14-177. Under separate cover, and for completeness, it provides copies of the Lockheed Martin Letter into IB Docket Nos. 15-256 and 97-95, RM-11664, and WT Docket No. 10-112.

for the Commission to make any action favoring UMFUS in the 28 GHz band conditional upon successful resolution of the aggregate interference issue.³

The principal points in the ViaSat Letter bookend Lockheed Martin's international and treaty points from a domestic perspective. ViaSat thoroughly documents the status of satellite and terrestrial allocation and designation actions by the Commission concerning the 28 GHz band. Among other things, it shows how UMFUS interests have chronically misstated and disregarded satellite expectations based on the existing rules and allocations, leading to unreasonable and unrealistic positions on potential sharing discussions;⁴ it shows that terrestrial mobile operations are not part of the present allocation/designation picture in 28 GHz – a picture that has had co-primary FSS use in the U.S. Table of Frequency Allocations since 1973;⁵ and it shows that there is no conditionality whatsoever regarding possible mobile wireless operations in any of the numerous existing satellite and earth stations licenses the Commission has issued in the 28 GHz band.⁶ Most importantly, ViaSat shows that holders of Commission authorizations for the 28 GHz band have strong investment-backed expectations that they will be permitted to operate their licensed facilities, as authorized, for the full license terms. ViaSat rightly notes that relevant judicial precedent – including a decision from the United States Supreme Court's just-concluded term – confirms that where agency authorizations and rules spurred serious reliance, "that reliance must be taken into account and cannot lightly be disregarded."⁷ Together, these ViaSat points, and some others not mentioned here,⁸ compel a considered and deliberate approach to potential UMFUS use of the 28 GHz band than the Commission appears prepared to take.

Between them, the Lockheed Martin and ViaSat letters demonstrate that longstanding and settled principles of international comity and administrative procedure are converging in a way that would make any Commission action that impinges upon established FSS rights here and abroad both arbitrary and capricious. Numerous technical and policy issues need to be debated on the proper footings in the record before any final action advancing UMFUS at the expense of the FSS can occur in the 28 GHz band. ViaSat's July 1, 2016 Letter adds a further layer of necessary conditionality to the Commission's forthcoming initial Report and Order in this proceeding.

Respectfully yours,

/s/ Jennifer A. Warren

Jennifer A. Warren

³ Lockheed Martin Letter, at 2-4.

⁴ See ViaSat Letter at 3.

⁵ See *id.*, at 5-8.

⁶ See *id.*, at 10-12.

⁷ ViaSat Letter at 15-16 & n.72 (citations omitted).

⁸ Lockheed Martin emphasizes that it has not had an opportunity to independently validate the exhibits and technical analysis ViaSat provides in an exhibit to its letter regarding line-of-sight statistics to the geostationary orbit and building heights in particular cities. This does not, in any way, undercut the assertion from ViaSat that the mobile wireless simulations in this proceeding rely on unrealistic and unsubstantiated assumptions. See *id.*, at 20 and Ex. 1.