Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

International Bureau Public Notice on Siting Methodologies for Earth Stations Seeking to Operate in the 24.75-25.25 MHz, 27.5-28.35 GHz, 37.5-40 GHz, 47.2-48.2 GHz, and 50.4-51.4 GHz Frequency Bands to Demonstrate Compliance with Section 25.136	)	IB Docket. No. 17-172

To: International Bureau

PETITION FOR RECONSIDERATION

THE SATELLITE INDUSTRY ASSOCIATION

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The Satellite Industry Association ("SIA"),[1] pursuant to Section 1.429 of the Commission's Rules, hereby requests that the International Bureau ("Bureau") reconsider its June 15 Public Notice on siting methodologies for earth stations to align more closely with underlying Commission rules and policies.[2]

I. INTRODUCTION AND SUMMARY

When the Commission adopted the Spectrum Frontiers decisions in 2016, 2017, and 2018, allocating spectrum for operations in the Upper Microwave Flexible Use Service

[1] SIA Executive Members include: Amazon; AT&T Services, Inc.; The Boeing Company; EchoStar Corporation; Intelsat S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; Ligado Networks; Lockheed Martin Corporation; OneWeb; SES Americom, Inc.; Space Exploration Technologies Corp.; Spire Global Inc.; and Viasat Inc. SIA Associate Members include: ABS US Corp.; AIRBUS U.S. Space & Defense, Inc.; Amazon Web Services; Analytical Graphics, Inc.; Artel, LLC; Astranis Space Technologies Corp; Blue Origin; Eutelsat America Corp.; ExoAnalytic Solutions; HawkEye 360; Hughes; Inmarsat, Inc.; Kymeta Corporation; Leonardo DRS; Lynk; Omnispace; OneWeb Satellites; Panasonic Avionics Corporation; Peraton; Planet; Telesat Canada; and XTAR, LLC. For more information on SIA, see www.sia.org. These comments are supported by all SIA members except for AT&T, which abstains from participation.

[2] International Bureau Guidance on Siting Methodologies for Earth Stations Seeking to Operate in the 24.75-25.25 MHz, 27.5-28.35 GHz, 37.5-40 GHz, 47.2-48.2 GHz, and 50.4-51.4 GHz Frequency Bands to Demonstrate Compliance with Section 25.136, IB Docket No. 17-172, DA 20-631 (rel. June 16, 2020) (the "Public Notice").

("UMFUS"), it recognized that satellite operations would continue in those bands, and made specific provision to ensure that the bands would accommodate a reasonable number of new fixed-satellite service ("FSS") facilities without impairing terrestrial operations.[3] This policy is reflected in Section 25.136, which authorizes satellite operators to deploy new ground antennas as their operations evolve but does so within limits designed to allow for robust UMFUS deployment. The Commission also contemplated the potential for guidance on how to comply with Section 25.136 by empowering the Bureau to request comment on implementation of that provision.[4] The value of continuing operations of satellite networks in these bands, and particularly their broadband services, has become even more apparent as the nation seeks to address the impacts of the COVID-19 pandemic, which has increased demand for all types of broadband service.

SIA supports the Bureau's efforts to provide guidance as to best practices for compliance with the rules adopted by the full Commission in the Spectrum Frontiers proceeding. However, in several areas the Public Notice departs from those decisions or is based on an inadequate record, is procedurally flawed, and will severely limit the ability of satellite operators effectively to operate. Because satellite operators already are preparing and filing applications for earth

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[3] Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, *Report and Order*, 31 FCC Rcd 8014 (2016) (*Spectrum Frontiers First Report and Order);* 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 (2017) (*"Spectrum Frontiers Second Report and Order")*; Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, *Third Report and Order, Third Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order*, 33 FCC Rcd 5576 (2018) (*"Spectrum Frontiers Third Report and Order");* Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, *Fifth Report and Order*, 34 FCC Rcd 2556 (2019) (*"Spectrum Frontiers Fifth Report and Order*).

[4] *Spectrum Frontiers First Report and Order*, 31 FCC Rcd at 8036, 8051, ¶¶ 54, 93, n.120 & n.223.

stations in the affected bands, SIA requests that the Bureau expeditiously reconsider and revise the Public Notice to better conform to Commission precedent and avoid adverse effects on the satellite industry and its customers.

Specifically, SIA requests that the Bureau: (1) eliminate limitations on earth station collocation that conflict with Commission rules; (2) revert to the definition of a "Highway" adopted by the Commission; (3) allow applicants more flexibility in providing antenna pattern demonstrations; (4) permit the use of clear sky EIRP levels; and (5) remove the requirement to aggregate population values for all licensed points of communications.[5] Addressing these problems will ensure that the processing of earth station applications reflects the policies expressed in the Spectrum Frontiers decisions and will provide critical flexibility to SIA members, enhancing their ability to serve U.S. and global users, and contributing to growth of U.S. jobs and investment.

Accordingly, and as discussed below, SIA requests that the Bureau reconsider its issuance of the Public Notice and modify the guidance provided therein to be consistent with Section 25.136 and other Commission policies.[6]

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[5] In accordance with Section 1.429(b) of the Rules, SIA notes that the portions of this petition concerning the limitations on collocation of earth stations and the definition of "Highway" under the rules "rely on facts or arguments which have not previously been presented to the Commission." As described below, the reason that this petition presents new facts and arguments is that the Bureau had not previously asked for comment on these topics. *See infra* Sections II.A, II.B. Because no party had an opportunity to present facts or arguments on these questions prior to this petition, consideration of the SIA arguments is consistent with the public interest.

[6] Reconsideration is an appropriate mechanism to review these Bureau-level guidelines. The "guidance" provided in the Public Notice is binding on earth station applicants in the affected bands, and therefore effectively is an order. The Public Notice is a final action, as no further decisions are contemplated. Thus, it is subject to review under the rules. The Commission has recognized, as recently as last year, that petitions for reconsideration are an appropriate

II. CHANGES TO THE PUBLIC NOTICE ARE REQUIRED TO ACHIEVE STATED COMMISSION GOALS AND PROMOTE THE PUBLIC INTEREST

The Bureau states that the Public Notice is intended to "clarify the Commission's expectations regarding the demonstrations required under section 25.136" and was "drafted in a manner consistent with the rule as modified by the Commission's subsequent decisions."[7] However, in a number of areas the Public Notice either conflicts with the provisions of Section 25.136 and the case law discussing it, or deals with issues beyond the scope of the rule and not addressed in the record. These provisions of the Public Notice would handcuff satellite network operators by unduly restricting their ability to deploy new earth station facilities to expand and improve service to customers, undermining the Bureau's claim that it "seek[s] to allow applicants flexibility in how they demonstrate compliance" with Section 25.136.[8] Moreover, the Bureau's actions exceed the authority delegated to it by the Commission and violate basic administrative law obligations to provide adequate notice and justify agency decisions. As such, the Public Notice must be reconsidered.

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mechanism for addressing guidance intended to bind parties appearing before the agency. *Consumer and Governmental Affairs Bureau Seeks Comment on Effectiveness of Its Tribal Engagement Guidance and to Refresh the Record on Related Petitions for Reconsideration,* Public Notice, Docket No. 10-90, DA 19-1055 (CGB 2019) (seeking comment on petitions for reconsideration of guidance document). Similarly, the Commission has acted on petitions for reconsideration of guidance documents on at least two occasions. *See Connect America Fund,* Order, 29 FCC Rcd 9624 (2014) (denying reconsideration of guidance document on timeliness and substantive grounds); *Improving Public Safety Communications in the 800 MHz Band,* Fourth Memorandum and Order, 23 FCC Rcd 18512, 18519-20 (2008) (denying petition for reconsideration of guidelines concerning 800 MHz rebanding on substantive grounds).

[7] Public Notice at 1.

[8] *Id.* at 2.

A. Changes to the Portions of the Public Notice Concerning Collocation of Earth Stations Are Necessary to Align with the Underlying Rule

First, the Bureau must revise the Public Notice's language on collocating a new antenna with an existing earth station to conform to the Commission's express intent. The Public Notice states that if the aggregate PFD contour or protection zone calculated taking into account a proposed new antenna "contains areas outside the contour or protection zone of the grandfathered earth station, the new earth station will be counted against the limit on the total number of earth stations for that licensing area."[9] This language directly conflicts with Section 25.136(a)(4)(i) of the rules, which states that for purposes of calculating whether the numerical earth station limit has been reached, "multiple earth stations that are collocated with or at a location contiguous to each other shall be considered as one earth station."[10]

The rule was intended to encourage earth station collocation by exempting collocated antennas from the numerical limit. As the Commission emphasized in 2017, "for purposes of complying with the limit on the absolute number of earth station locations within an UMFUS license area, each location can accommodate multiple earth stations that are either collocated with each other or at locations contiguous to each other."[11] The Commission went on to make clear that, while the rule as adopted "does not limit the number of earth stations *per se*, it does limit the proliferation of protection zones surrounding those earth stations, and that serves an important policy objective."[12] The current Public Notice provision would counteract that objective, eliminating the incentive to collocate and constraining satellite operators' ability to

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[9] *Id.* at 5.
[10] 47 C.F.R. § 25.136(a)(4)(i).
[11] *Spectrum Frontiers Second Report and Order*, 33 FCC Rcd at 11034.
[12] *Id.*

robustly use frequency bands shared between FSS and UMFUS, with significant detrimental consequences to existing and future satellite systems.

The approach taken in the Public Notice renders the exception in Section 25.136(a)(4)(i) a virtual nullity. Even for antennas installed on a single site, adding PFD contributors will increase the aggregate contour absent exceptional and uniquely situated surrounding terrain, and a new antenna installed on a site contiguous to an existing earth station location always will expand the aggregate PFD contour. Under the approach adopted in the Public Notice, the new antenna would count toward the numerical limits in both of these scenarios. But Section 25.136(a)(4) expressly states that multiple earth stations either collocated or at contiguous sites are to be considered as a single earth station for purposes of the rule. The Bureau's guidance simply cannot be squared with the explicit language in the Commission's rule.

To remedy this conflict, the Bureau should revise the Public Notice by modifying the third bullet under the header "Collocation of earth stations" as follows:

> Consistent with the *Spectrum Frontiers* orders, for a new antenna collocated with or at a location contiguous to a grandfathered earth station or an already licensed earth station, if the aggregate PFD contour or protection zone contains areas outside the contour or protection zone of the existing earth station, the new earth station: (i) will not be counted against the limit on the total number of earth stations for that licensing area and (ii) will be considered in the calculation of the aggregate population limit only for the areas outside the contour or protection zone of the existing earth station.

Revising the Public Notice in this manner is necessary to reinstate the incentive for earth station collocation reflected in Commission rules and decisions. Accordingly, the Bureau should adopt the above revision.

B. The Public Notice's Redefinition of Highways Is Contrary to Commission Policies

Second, the Bureau should revert to the original definition of highways and arterial roads in Section 25.136(a)(4)(iii) of the Commission's Rules and described in previous Commission decisions. Contrary to the Bureau's stated intention to "clarify the Commission's expectations," the Public Notice introduces new confusion regarding this issue.

Prior to the Public Notice, the Commission established the meaning of "Interstate, Other Freeways and Expressways, or Other Principal Arterial" (collectively, "Highway") roads.[13] Additionally, and to resolve possible uncertainty, on reconsideration the Commission clarified that its siting prohibition includes "only the following types of roads, as they are defined and classified by the U.S. Department of Transportation…Interstate, Other Freeways and Expressway, Other Principal Arterial."[14] This determination was based on a full record that was properly developed at the time of the creation of the rules at issue, and leaves no doubt regarding the Commission's meaning.

However, without any justification, the Public Notice departs from the Commission's clear language on this subject. Specifically, the Public Notice suggests that relying on the U.S. Department of Transportation data discussed by the Commission is inadequate and purports to impose a new requirement on applicants to consult state transportation agency records as well.[15] This change not only effectively revises the Commission's explicit language, it is wholly unsupported by the record. In 2017, when the Bureau invited comment on earth station siting

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[13] 47 CFR 25.136(a)(4)(iii).
[14] Spectrum Frontiers R&O on Recon, ¶ 131. *Accord Spectrum Frontiers Fifth Report and Order*, 34 FCC Rcd at 2560, ¶ 10
[15] Public Notice at 5.

matters related to Section 25.136,[16] it did not request comment on the definition of Highways. Unsurprisingly, the parties responding to that invitation did not address the issue.[17] Thus, the Bureau's decision to depart from the Commission's definition lacks any evidentiary foundation.

Moreover, the Bureau's decision to incorporate a reference to state highway records creates significant burdens for applicants and adds ambiguity to the earth station licensing process. Policies and definitions can vary significantly between states and, unlike federal regulations, may not be readily available to interested applicants. Further, the Bureau fails to consider that even within a single state, different agencies may have different definitions that apply to road designations. For example, a state-level department of transportation and a state zoning commission are likely to have different definitions and standards for what qualifies as a highway. As a result, the Public Notice will create more confusion among earth station applicants and contravenes both the language of Section 25.136 and the Commission's decision in 2017 to explicitly delineate its interpretation of the terms of that rule.

In short, the Bureau has revised the Commission's definition in a way that effectively changes the adopted rule, and imposes an undue, unnecessary, and improper regulatory burden on satellite operators. The Bureau should correct this error by revising the Public Notice to delete the section entitled "Guidance Regarding Definition of Roadways."

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[16] *See* International Bureau Seeks Comment on Implementing Earth Station Siting Methodologies, Public Notice, DA 17-606 (June 21, 2017) ("2017 Public Notice").

[17] *See, e.g.,* Reply Comments of CTIA, IB Docket No. 17-172, filed Aug. 7, 2017; CTIA Written *Ex Parte* Filing, IB Docket No. 17-172, filed May 21, 2020; Verizon Written *Ex Parte* Filing, IB Docket No. 17-172, filed June 5, 2020.

C. The Antenna Patterns Used for Demonstrations Must Remain Flexible

The Bureau also should alter its guidance on antenna gain patterns to allow applicants to rely on standard masks specified in the Commission's rules. The Public Notice states that:

> Demonstrations should generally rely on measured gain patterns. Calculated gain patterns may be used when measured patterns are unavailable. Demonstrations may also rely on the section 25.209 mask, but applicants should update their demonstration with a measured gain pattern when certifying completion of earth station construction pursuant to section 25.133(b).[18]

This approach unnecessarily limits the flexibility that the Commission sought to maintain when it adopted the rules. The Bureau should instead allow parties to satisfy the requirement to provide antenna gain information by using the measured gain pattern, the simulated gain pattern, or the relevant Section 25.209 mask, as nothing in Section 25.136 suggests an intent to constrain an applicant's ability to rely on any of these options. Consistent with the rules, the decision on the earth station antenna gain pattern used to show compliance with Section 25.136 should be left to the applicant, who will make a determination based on the information available at the time of the filing. Similarly, as long as the actual performance of the antenna is within the envelope described in the application, there is no reason to mandate that applicants update their demonstration with a measured gain pattern when certifying completion of earth station construction pursuant to Section 25.133(b). Section 25.136(g) of the Commission's rules already specifies that earth station operations in any UMFUS band will be conditioned upon continuing compliance with an applicant's proposed PFD contour.[19]

SIA recognizes that, in some circumstances, access to measured earth station antenna gain patterns will be beneficial. In determining the aggregate PFD contour created by multiple

[18] Public Notice at 3.
[19] 47 C.F.R. § 25.136(g).

collocated earth stations, later filed earth station applicants may request that previously-licensed earth station licensees provide measured earth station antenna patterns, if available, recognizing that measuring earth station antennas over 3 meters in diameter may not be feasible more than 7 degrees off-axis.[20]

Accordingly, SIA requests that the Bureau modify the third bullet under the Public Notice heading "Computing PFD Contours and Protection Zones" as follows:

> Demonstrations should rely on measured gain patterns, calculated gain patterns, or the section 25.209 mask.
>
> a. When certifying completion of earth station construction pursuant to section 25.133(b), applicants do not need to update their demonstration as long as the actual performance of the antenna is within the envelope of the application.
>
> b. In determining the aggregate PFD contour caused by multiple colocated earth stations, later filed earth station applicants may request that already licensed earth station licensees use measured earth station antenna patterns in the information they provide to support the aggregate PFD determination with the new earth station, if available, and recognizing that measuring earth station antennas over 3 meters in diameter may not be feasible more than 7 degrees off-axis.*
>
> * See section 25.132(d).

These updates will enhance flexibility for earth station applicants without adversely affecting the protection of UMFUS licensees.

D. Use of Clear Sky EIRP Levels Is Reasonable

The Bureau should also allow earth station applicants to rely on EIRP data reflecting clear sky conditions. The Public Notice states that, with respect to EIRP levels:

> Demonstrations should take into account worst case input power density and not just input power density during clear sky conditions. Where an application relies on clear-sky conditions, the applicant should explain with detail why that assumption is appropriate for the specific circumstances and location.[21]

[20] *See* 47 C.F.R. § 25.132(d)

[21] Public Notice at 3 (footnote omitted).

SIA understands that most earth station applicants to date have relied on clear sky EIRP levels to determine their PFD contours, and supports continuing to allow such reliance given the small percentage of time that the clear sky levels would be exceeded. Using worst case levels would overestimate the size of the PFD contours and would provide a level of protection to UMFUS operations that is not needed given the variable nature of UMFUS transmissions.

Further, the Commission's rules expressly allow transmitting earth stations to be authorized based on clear sky EIRP levels and provide for the authorized levels to be exceeded during periods of rain fade.[22] Section 25.136 analyses should logically be based on the submitted and ultimately licensed power levels, which confer this flexibility. Accordingly, the Bureau should revise the Public Notice to conform to common practice and other Commission rules by deleting the fifth and sixth bullets under the heading "Computing PFD Contours and Protection Zones."

E. Population Values for GSO Earth Stations with Multiple Points of Communication Should Not Be Aggregated

Finally, the Bureau should remove the requirement to aggregate population values for earth stations communicating with GSO satellite networks. The Public Notice states that:

> Earth stations communicating with geostationary orbit ("GSO") space stations should provide an analysis based on the antenna pointing angles toward the points of communication requested in their earth station applications and demonstrate that the aggregate affected population corresponding to all points of communication does not exceed the applicable limits in Section 25.136.[23]

SIA agrees that the earth station application should include analysis of the affected population for each geostationary satellite identified as a requested point of communication, but

[22] 47 C.F.R. 25.204(e)(1) (earth stations operating above 10 GHz can exceed the uplink EIRP and EIRP density limits specified in the station authorization under conditions of uplink fading).
[23] Public Notice at 2-3.

requiring aggregation of the affected population for all the geostationary points of communication to determine whether the relevant population limits are met is not justified. At any given time, an earth station can only communicate with one geostationary satellite. Accordingly, it is sufficient for applicants to show that the affected population for each point of communication individually complies with the rule.

Therefore, the Bureau should revise the Public Notice so that the first bullet under the heading "Earth Station Location and Antenna Pointing" reads as follows:

> Earth stations communicating with geostationary orbit ("GSO") space stations should provide an analysis based on the antenna pointing angles toward the points of communication requested in their earth station applications and demonstrate that the affected population corresponding to each point of communication does not exceed the applicable limits in Section 25.136.

Additionally, applicants' showings should include the aggregate of the largest affected populations of each earth station within the same UMFUS license area when determining compliance with the rule. For example:

> In a licensing area where: (1) a single earth station is already licensed to communicate with four points of communications with corresponding affected populations of *a*, *b*, *c*, and *d*, where *b* is the largest value; and (2) an applicant seeks to add a new earth station with three points of communications with corresponding affected populations of *x*, *y*, and *z*, where *z* is the largest value, the applicant should demonstrate that $b + z \leq$ the relevant Section 25.136 population limit.[24]

III. THE PUBLIC NOTICE IS INCONSISTENT WITH ADMINISTRATIVE LAW AND FCC PRECEDENT

In addition to the substantive considerations described above, reconsideration is required because the issuance of the Public Notice violated key procedural requirements. These concerns are particularly significant given the nature of the Public Notice, which in practice adopts new

[24] This example assumes the relevant PFD contours for *b* and *z* do not overlap.

requirements – some of which contradict the rules adopted by the Commission[25] – rather than simply providing non-binding guidance to assist satellite operators in crafting their applications.

The Bureau did not have the power to depart from or go beyond established Commission rules and policies in this Public Notice. The Commission's rules delegate limited authority to the Bureau, and explicitly exclude matters that cannot be resolved under "outstanding precedents and guidelines" and the issuance of "orders arising from rulemaking or inquiry proceedings."[26] The *Spectrum Frontiers First Report and Order* directed the Bureau only to "issue a public notice seeking comment" on earth station siting issues.[27] Where the Commission delegates authority for Bureau action in a rulemaking proceeding, it provides clear direction, which is absent here.[28]

In some areas the Bureau's Public Notice contradicts the language adopted by the Commission in Section 25.136.[29] For example, as discussed above, the provisions in the Public Notice regarding treatment of new earth stations collocated with or at a site contiguous to an existing earth station conflict with the plain language of Section 25.136 and explicit Commission discussions of this matter. The Public Notice provides no rationale for addressing this matter at

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[25] *See, e.g.,* Sections II.A (earth station collocation), II.C (antenna gain measurements).
[26] 47 C.F.R. § 0.261(b)(1)(iii), (iv).
[27] *Spectrum Frontiers First Report and Order,* 31 FCC Rcd at 8036, 8051, ¶¶ 54, 93, n.120 & n.223 (emphasis supplied).
[28] *Compare Procedures to Govern the Use of Satellite Earth Stations on Board Vessels,* Report and Order, 20 FCC Rcd 674, 723 (2004) (delegating authority to International Bureau "to revise its earth station license application procedures and related forms to conform to the rules we adopt today") and *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands,* Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16164 n. 468 (2012) (delegating authority to International Bureau to dismiss pending applications that were inconsistent with the order) *with Spectrum Frontiers First Report and Order,* 31 FCC Rcd at 8036, 8051 (delegating authority to International Bureau only to request comments).
[29] *See supra* Sections II.A, II.B

all given the clear dictates of existing policy, much less for issuing guidance that conflicts with the Commission's prior statements. This action is far beyond any authority that the Commission can delegate to the Bureau. As the D.C. Circuit has explained, delegated authority does not extend to any proceeding that would modify, reverse, or change a rule.[30]

Even if action had been taken at the Commission level, the Public Notice would have violated basic requirements of the Administrative Procedure Act, which requires appropriate notice and opportunity to comment to develop the necessary evidentiary record before an agency adopts substantive requirements affecting regulated entities.[31] As described above, the Bureau's 2017 Public Notice inviting input on earth station siting matters did not seek comment on a number of the issues discussed in the Public Notice.[32] Therefore, and unsurprisingly, since interested parties were not given notice of the scope of the issues to be addressed in the Public Notice, the record is devoid of comment on these issues. As a result, there is no administrative record to support the conclusions in the Public Notice on these matters.

By making the changes described above, the Bureau can cure these defects. Reconsidering the Public Notice as SIA has requested will bring the document in line with Commission policies, reflect the record that has been created, and ensure that satellite operators are able to expand their offerings in response to customer demand.

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30 *See Sprint Corp. v. FCC,* 315 F.3d at 376 (rejecting FCC claim that decision was a logical outgrowth of proposal in a Common Carrier Bureau public notice because the bureau had no authority to engage in rulemaking).

31 5 U.S.C. 553(c). *See Sprint Corp. v. FCC,* 315 F.3d 369, 376 (D.C. Cir. 2003) (holding that APA notice requirements are not met when the notice does not include "anything [to] suggest that the Commission" was contemplating the actions it took).

32 *See supra* Sections II.A (collocation), II.B (definition of "Highways").

IV. CONCLUSION

For the foregoing reasons, the Bureau should reconsider the Public Notice and modify it in accordance with the proposals contained herein.

Respectfully submitted,

/s/

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