Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
International Bureau Seeks Comments on Satellite Industry Association Petition for Reconsideration of Public Notice Issuing Guidance on Siting Methodologies for Earth Stations Subject to Section 25.136	)	IB Docket No. 17-172

COMMENTS OF KUIPER SYSTEMS LLC

Kuiper Systems LLC, a wholly owned subsidiary of Amazon.com Services LLC (collectively, "Amazon"), supports the Satellite Industry Association's ("SIA") Petition for Reconsideration[1] of the recent guidance issued by the International Bureau (the "Bureau") on siting methodologies for Fixed Satellite Service ("FSS") earth stations subject to Section 25.136 of the Commission's rules ("Guidance").[2] Consistent with SIA's Petition, Amazon agrees that the Bureau should issue revised Guidance that: (1) omits limitations on earth station collocation that conflict with Commission rules, (2) permits the use of clear-sky EIRP levels, (3) allows applicants a measure of flexibility when providing antenna pattern demonstrations, and (4) reverts to the Commission-adopted definition of "Highway."[3]

I. INCONSISTENCIES BETWEEN THE GUIDANCE, COMMISSION RULES AND THE RECORD JUSTIFY RECONSIDERATION.

As mentioned in SIA's Petition, the Guidance does not comport with the Administrative Procedure Act ("APA"). The APA requires agencies to offer a meaningful opportunity for the

[1] *See* Petition for Reconsideration of the Satellite Industry Association, IB Docket No. 17-172 (filed July 16, 2020) ("*Petition*").

[2] *See* 47 C.F.R. § 25.136; *International Bureau Issues Guidance on Siting Methodologies*, Public Notice, IB Docket No. 17-172, DA 20-631 (rel. June 16, 2020).

[3] Amazon supports adoption of SIA's specific textual revisions of these items.

public and stakeholders to comment on a proposed rule before it is adopted.[4] Amazon agrees with SIA that the requirement was not met here.

In addition to exceeding the scope of the 2017 Public Notice and lacking a basis in the record, the Guidance also exceeds the scope of the Bureau's delegated authority. The Commission's rules delegate limited authority to the Bureau and explicitly exclude unresolved matters concerning "outstanding precedents and guidelines" and the issuance of "orders arising from rulemaking or inquiry proceedings."[5] In this case, the Commission directed the Bureau to "issue a public notice seeking comment" on earth station siting issues; however, the Commission did not grant the Bureau authority to issue its own rules or other binding constraints.[6]

The Guidance is also at odds with the Commission's rules, including the rules where the Commission specified how FSS earth stations and UMFUS deployments could co-exist in Section 25.136 of its rules.[7] SIA accurately notes that the Guidance, originally intended to clarify the Commission's rules, instead departs from the Commission's UMFUS precedent and purports to serve as a new set of obligations that FSS earth station applicants must follow as opposed to clarifications or suggestions affording flexibility.[8] For example, seventeen of the twenty primary

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[4] *See* 5 U.S.C. § 553(c); *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).

[5] 47 C.F.R. § 0.261(b)(1)(iii), (iv).

[6] *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).

[7] *See Use of the Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016); *see also* 47 C.F.R. § 25.136.

[8] *See Guidance*, at 1 (describing the Guidance as "the Commission's *expectations regarding the demonstrations required under section 25.136*") (emphasis added).

items in the Guidance mandate compliance by specifying what an applicant "will" or "should" do.[9] Only three items allow for flexibility by "encourag[ing]," "recommend[ing]," or "suggest[ing]" what an applicant do.[10]

In addition, the Guidance conflicts with, or contradicts, a number of Commission policies and rules. First, the Guidance directly contradicts the Commission's expressed intent to allow for collocating FSS earth station antennas.[11] Second, the Bureau's decision to require worst-case EIRP levels (rather than clear-sky EIRP values) conflicts with Section 25.204(e)(1) of the Commission's rules,[12] overestimates the size of the PFD contours, and provides an excessive level of protection to UMFUS operations given the variable nature of UMFUS transmissions.[13] Third, the Bureau's decision to allow only measured gain patterns unduly restricts applicants' ability to also submit simulated gain patterns or Section 25.209 masks even though Section 25.136 contains no such restrictions.[14] Fourth, the Bureau's revised definition of a Highway—which the

[9] *Id.* at 2-5.

[10] *Id.* at 3-4.

[11] *See Petition*, at 7-8 ("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.'") (quoting *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, 11034 (2017)).

[12] *See* 47 C.F.R. § 25.204(e)(1).

[13] *See Petition*, at 12-13.

[14] *See id.* at 11-12; 47 C.F.R. § 25.136. Furthermore, if an applicant operates within its described envelope, it does not need to provide a measured gain pattern when certifying its build-out. Section 25.136(g) already specifies that FSS applicants in any UMFUS band must continue complying with their proposed PFD contour. *See id.* § 25.136(g).

Commission had already defined—lacks evidentiary foundation, creates significant administrative burdens for applicants, and adds ambiguity to the earth station licensing process.[15]

II. THE GUIDANCE IS INCONSISTENT WITH THE COMMISSION'S POLICY GOALS.

There can be no question that private and public stakeholders in space have recognized the value that current and new satellite systems offer to their customers and citizens. Satellite operators are committing substantial resources because of the need for ubiquitous connectivity and demand for new NGSO FSS broadband services in the U.S. and abroad.[16] The Commission has stressed the importance of U.S. leadership in satellite broadband technology and the important role NGSO systems will increasingly play in connecting households and companies throughout the U.S.[17] As currently constructed, the Guidance is not consistent with these longstanding Commission policy goals because it has the effect of constraining the satellite industry rather than

[15] *See Petition*, at 9-10.

[16] *See* Michael Sheetz, *The space economy has grown to over $420 billion and is 'weathering' the current crisis, report says*, CNBC (July 30, 2020), https://cnb.cx/310VeIg; Michael Sheetz, *Space investing became real this year as Morgan Stanley hosts packed NYC investor summit*, CNBC (Dec. 14, 2019), https://cnb.cx/316IXSm.

[17] *See, e.g.*, Statement of Chairman Ajit Pai, *Mitigation of Orbital Debris in the New Space Age*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 4156, 4286 (2020) ("*Orbital Debris R&O*") ("These non-geostationary satellite orbit, or NGSO, constellations could be a game changer, benefiting Americans across the country and making high-speed Internet access a reality for more consumers—particularly those in remote and hard-to-serve areas."); Statement of Commissioner Geoffrey Starks, *Orbital Debris R&O*, at 4292 ("Next-gen satellite broadband technology holds tremendous promise for connecting people in the hardest-to-reach communities in rural America, and I'm excited that American companies like . . . Amazon are leading this burgeoning industry."); Statement of Commissioner Jessica Rosenworcel, *Facilitating the Communications of Earth Stations in Motion with Non-Geostationary Orbit Space Stations*, Notice of Proposed Rulemaking, 33 FCC Rcd 11416, 11433 (2018) ("The future belongs to the connected. If we want to realize its possibilities for everyone, everywhere, we need to think boldly about how we can put broadband in the ground, in the skies, and even beaming down from space.").

enabling its growth. The Bureau should follow the Commission's lead by adopting earth station siting guidelines that advance the United States' commitment to the commercialization of space.

III. CONCLUSION.

For the foregoing reasons, the Bureau should issue revised Guidance that is consistent with existing Commission rules and policies and that advances the Commission's goals.

Respectfully submitted,

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