

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

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|--|---|----------------------|
| In the Matter of                         | ) |                      |
|  | ) |                      |
| Wireless Telecommunications Bureau Seeks | ) | WT Docket No. 18-237 |
| Comment on DISH Request for Waiver of    | ) | DA 18-813            |
| AWS-4 and H-Block Emission Limits        | ) |                      |
|  | ) |                      |

**REPLY TO NTCH OPPOSITION**

DISH Network Corporation (“DISH”) replies to the opposition filed by NTCH, Inc. (“NTCH”) against the above-captioned DISH waiver request.<sup>1</sup> NTCH was the sole party to comment on the waiver request; and, as discussed below, its opposition is without merit. Among other things, NTCH’s opposition is based wholly on speculative assumptions about the outcome of a potential future court challenge to decisions that the Commission has already considered and affirmed. The Commission should reject NTCH’s opposition and move to grant the requested waiver that will enable more efficient investment and use of both bands.

DISH is the licensee of all 352 AWS-4 licenses and all 176 H-Block licenses nationwide. In order to harmonize operations across its licensed spectrum, DISH requests that the FCC waive Sections 27.53(h)(1) and 27.53(h)(2)(iv), thus allowing DISH to utilize the H Block and the AWS-4 spectrum as a contiguous band, with OOB limits applying only outside the H Block and AWS-4 Band (i.e., below 1995 MHz or above 2020 MHz) at an attenuation level of  $43 + 10 \log_{10}(P)$ .<sup>2</sup> NTCH opposes the requested waiver not for any technical reason, but based solely on its speculation on the potential outcome of a future court appeal that NTCH *might* file regarding

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<sup>1</sup> Letter from Donald Evans, Counsel for NTCH to Blaise A. Scinto, Chief, Broadband Division, Wireless Telecommunications Bureau, FCC (Aug. 20, 2018) (“Opposition”).

<sup>2</sup> Letter from Alison Minea, DISH Network Corporation, to Blaise A. Scinto, Chief, Broadband Division, Wireless Telecommunications Bureau, FCC (May 17, 2018).

the Commission’s decisions in other proceedings to affirm relief previously granted to DISH. NTCH’s speculation provides no basis for denying the requested waiver.

NTCH cites to no precedent to support the novel proposition that the requested waiver should be denied based on the possible success of a future court appeal that may be filed by NTCH in a separate proceeding. Claims based on similar speculation about future court cases have consistently been rejected.<sup>3</sup> For example, in *Entercom Sacramento License, LLC*, the Commission rejected claims of standing based on the argument that a party may prevail in a court appeal.<sup>4</sup> Similarly, in *Helen Wong-Armijo*, the Mobile Services Division rejected Warren Havens’ “purely speculative” argument that “pending litigation . . . will be resolved in his favor.”<sup>5</sup>

Moreover, as NTCH recognizes,<sup>6</sup> the Commission already has rejected the very claims forming the basis for NTCH’s opposition to the waiver request.<sup>7</sup> The Commission determined, among other things, that NTCH lacked standing to raise those claims because they were based on “unfounded speculation.”<sup>8</sup> Claims rejected by the Commission as “wholly speculative

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<sup>3</sup> See, e.g., *Entercom Sacramento License, LLC*, FCC 18-83, 2018 FCC LEXIS 1714 (2018) (citing string of decisions rejecting standing “based on the speculative assumption of a favorable outcome in pending litigation”); *Helen Wong-Armijo*, 32 FCC Rcd 9458, 9471-72 (MSD 2017) (rejecting claim that relief should be denied based on the outcome of pending litigation).

<sup>4</sup> *Entercom Sacramento License, LLC*, 32 FCC Rcd 7149, 7152 (2017).

<sup>5</sup> *Helen Wong-Armijo*, 32 FCC Rcd at 9471-72.

<sup>6</sup> Opposition at 1.

<sup>7</sup> See *NTCH, Inc.*, AU Docket No. 13-178, Memorandum Opinion and Order, FCC 18-122 (rel. Aug. 16, 2018); *DISH Network Corporation*, AU Docket No. 13-225, Memorandum Opinion and Order, FCC 18-123 (rel. Aug. 16, 2018) (“*DISH Order*”).

<sup>8</sup> *DISH Order* at ¶ 15 (“NTCH’s claim turns on the wholly speculative assumptions that the Commission might eliminate DISH’s terrestrial authority, that it might thereafter make this spectrum available for non-AWS-4 licensees, and that it might determine after further proceedings to do so by auctioning licenses for terrestrial operations in this band, notwithstanding the Commission’s prior determination that separate MSS and terrestrial broadband licensees cannot co-exist in that band. Such unfounded speculation does not establish any actual or imminent injury.” (footnotes omitted)).

assumptions”<sup>9</sup> in one proceeding should not be allowed to form the basis for denying relief in a separate proceeding.

Accordingly, given the lack of any meritorious opposition to its requested waiver, DISH urges the Commission to promptly grant the requested waiver. The requested waiver would permit DISH and/or its equipment vendors to certify equipment that operates across both the Upper H Block and the Lower AWS-4 spectrum from 1995-2020 MHz with no OOB limits within the contiguous band and at OOB levels attenuated by  $43 + 10 \log_{10}(P)$  outside those bands. Harmonizing the OOB limits for the adjacent Upper H Block and Lower AWS-4 Band will enable more efficient investment and use of both bands.

Respectfully submitted,

/s/

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August 30, 2018

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<sup>9</sup> *Id.*