



September 14, 2021

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Re: *Expanding Flexible Use of the 12.2-12.7 GHz Band, WT Docket No. 20-443*

Dear Ms. Dortch,

Amazon last week exposed a long history of misleading information, rule-flaunting, and ad hominem attacks that have characterized SpaceX's submissions in this proceeding.¹ We and other commenters have separately noted numerous other instances of similar behavior and lack of decorum by SpaceX.² Below we bring to the Commission's attention another recent claim by SpaceX that has not yet been analyzed on the record.

¹ Letter from C. Andrew Keisner, Lead Counsel, Kuiper Systems LLC, to Marlene H. Dortch, Secretary, FCC, IBFS File Nos. SAT-LOA-20200526-00055, SAT-AMD-20210818-00105 (filed Sept. 8, 2021).

² See, e.g., Letter from Brian Weimer, Counsel, OneWeb, to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-MOD-20200417-00037, at 1 (filed Apr. 21, 2021) ("In an ex parte filed yesterday by SpaceX, it states that 'OneWeb offered in the meeting with the Commission to retract its previous incorrect statements' to the press. OneWeb made no such offer to retract any previous statements made to the press."); Letter from Amy R. Mehlman, VP US Government Affairs and Policy, and Jarrett S. Taubman, Associate General Counsel Government and Regulatory Affairs, Viasat, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 18-314, at 2 (filed July 22, 2021) ("SpaceX's highly misleading characterization of the facts is yet another example of the misrepresentation and lack of candor that has become its stock-in-trade in advocacy before the Commission."); Letter from David Marshack, Managing Director and Chief Operating Officer, RKF Engineering Solutions, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 20-443, at 1 (filed Aug. 9, 2021) ("RKF Letter") ("SpaceX has impugned RKF's integrity, alleged without basis that RKF's technical findings were reached on a pay-for-play basis, equated the study to '[g]arbage,' and made many obviously false claims about the study's assumptions, methodology, and results.").

SpaceX has repeatedly insisted to the Commission that use of the 12 GHz band is an either-or, zero-sum choice between satellite and 5G use.³ RKF Engineering Solutions, LLC's ("RKF's") study and subsequent filing, as well as other material on the record, have all demonstrated that coexistence in the 12 GHz band is eminently feasible.⁴

Nevertheless, building on the false premise that the Commission must choose between satellite and 5G, SpaceX has also made assertions about the purported demand for its service from U.S. consumers, intimating (if inaccurately) that by allowing 5G services in the band the Commission would somehow deny those consumers a service they have paid for and are expecting.

Thus, SpaceX asserted in a recent filing with the Commission that it had "received over half a million pre-orders" for its Starlink service.⁵ SpaceX does not define what constitutes a "pre-order" or an "order," terms it uses repeatedly and interchangeably to describe the nature of the relationship it ostensibly has with more than 500,000 consumers. We appreciate that the Commission will decide what it believes those terms should mean in this context and what impression it believes SpaceX is attempting to create with its use of them. However, we note for the Commission's possible interest that Starlink's User Agreement states the following:

Prior to SpaceX shipping your Kit, your Deposit Payment is fully refundable and can be requested at any time via your Starlink account. . . . Placing a Deposit Payment does not obligate SpaceX to provide you with the Starlink Kit and Services and does not guarantee that the Starlink Kit and Services will be available to you.⁶

It appears that what SpaceX represented to the Commission as "orders" and "pre-orders" for Starlink service are, in fact, *fully refundable* \$99 *deposits* that do not obligate the consumer to

³ See, e.g., Comments of Space Exploration Holdings, LLC, WT Docket No. 20-443 and GN Docket No. 17-183, at 22 (filed May 7, 2021) ("The ubiquity of 12 GHz Band incumbent services thus belies DISH's and RS Access's unsupported claims that co-channel sharing with mobile 5G service is feasible . . .").

⁴ Comments of RS Access, LLC, WT Docket No. 20-443 and GN Docket No. 17-183, Appendix A (filed May 7, 2021) ("RKF NGSO Study"); RKF Letter.

⁵ Reply Comments of Space Exploration Holdings, LLC, WT Docket No. 20-443 and GN Docket No. 17-183, at 6-7 (filed July 7, 2021) ("SpaceX alone received over half a million pre-orders for its service within just months of initiating beta service and without any advertising or marketing. And the Commission has already granted blanket earth station licenses covering 2.5 million user terminals to SpaceX and one other NGSO FSS licensee alone, with applications for millions more pending").

⁶ Starlink Pre-Order Agreement, Starlink <https://bit.ly/37mp3qi> (last visited Sept. 3, 2021).

purchase *anything* or subscribe to *any* Starlink service, nor even for Starlink to provide any service at all.⁷ Perhaps these deposits have been subsequently converted to binding orders or there is some other manner in which consumers have actually made a firm contractual commitment to purchase Starlink? Though the Commission may have access to actual subscriber numbers, we do not; the only information to which we have access is that which SpaceX has officially provided to the Commission in this proceeding and which we have separately gathered from other public sources.

In any event, RKF's engineering analysis explained that, for purposes of coexistence in the band, the very low probability of exceeding a threshold of -8.5 dB would not vary with the number of Starlink terminals that are assumed to exist.⁸ Thus, the question of how many orders or ultimate users Starlink may achieve far in the future is a red herring with respect to whether the band can be shared with 5G. It only serves to obfuscate the underlying issue before the Commission: can 5G be rapidly accelerated with the 12 GHz band for the benefit of tens of millions of American consumers without preventing the emergence of satellite-based services? The record says yes.

⁷ The definition and description of a customer order is not an academic question. In other contexts, companies have been subject to severe consequences for incomplete or misleading characterizations of customer "orders." *See, e.g.*, Press Release, Lordstown Motors, *Lordstown Motors Reports Results Of Special Committee Investigation Of Hindenburg Research Report* (June 14, 2021), <https://bit.ly/3DRjRtn>; Ben Foldy, *Lordstown Motors Discloses Justice Department Investigation as Truck Launch Looms*, WALL STREET J. (July 16, 2021), <https://on.wsj.com/3yU74Tc>.

⁸ RKF NGSO Study at 2 ("This 0.888% [exceedance event probability] result is statistically valid for any large number of satellite user terminals. Stated differently, although the absolute number of terminals that may be affected by interference will change if the actual number of terminals were higher or lower than the 2,500,000 RKF examines, the percentage will not.").

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We are confident the Commission will not be distracted by incomplete, irrelevant, and distracting information that some parties may submit in this proceeding.⁹

Please contact me with any questions regarding this submission.

Sincerely,

/s/ V. Noah Campbell

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⁹ Recall also that SpaceX touted its 500,000 “orders” in the course of insisting that the potential number of NGSO subscribers *in the United States* exceeds the 2.5 million currently authorized by the Commission. It now appears, based on subsequent statements of Mr. Elon Musk and SpaceX disclosures in other forums, that the 500,000 “orders” SpaceX claimed to have received reflect the total from many countries, not just from the United States. *See, e.g.*, Letter from David Goldman Director, Satellite Policy, Space Exploration Technologies Corp., to Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-LOA-20200526-00055, Attachment at 2 (filed Aug. 2, 2021) (“Currently serving ~90,000 users in 12 countries[.] Over half a million orders/deposits globally[.]”). We do not know how many “orders” Starlink has actually gotten from *U.S.* consumers. Ultimately, for the reasons noted above, the actual number is irrelevant to the real policy choice before the Commission.