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William H. Johnson  
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September 26, 2019

Marlene H. Dortch  
Secretary, Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Expanding Flexible Use of the 3.7 to 4.2 GHz Band, GN Docket No. 18-122**

Dear Ms. Dortch:

On September 24, 2019, Greg Romano and I, with outside counsel Adam Krinsky, met with General Counsel Tom Johnson, Office of General Counsel staff Ashley Boizelle, Deborah Broderson, Michael Carlson, Matthew Dunne, David Horowitz, and Bill Richardson, as well as Matthew Pearl of the Wireless Telecommunications Bureau.

At the outset, we noted that, under the circumstances of the C-band, a satellite operator-led transition is the fastest and most efficient way to achieve the principal goal of repurposing the maximum feasible amount of 3.7-4.2 GHz spectrum as soon as possible while ensuring continued delivery of existing content distribution traffic. Such a process can free up hundreds of megahertz of valuable mid-band spectrum, potentially years faster than a Commission-administered auction process. The value of that speed-to-market advantage to our economy and international competitiveness is enormous as countries around the world seek to position themselves as the hub of 5G development.

For those satellite operators that are not currently participating in the C-Band Alliance – the Small Satellite Operators (“SSOs”) and Eutelsat – we discussed the Commission’s authority under the particular circumstances here to reduce the amount of C-band spectrum reserved in their U.S. market access grants. Applying the framework of Section 316 to those market access grants,<sup>1</sup> the Commission can readily find that modifying spectrum access rights and repurposing

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<sup>1</sup> Each of the SSOs and Eutelsat hold non-U.S. space station licenses and U.S. market access grants. In a 2005 order modifying the spectrum reservations of two non-U.S. licensed satellite operators, the Commission explained “while we are not taking action directly under Section 316, since [the non-U.S. licensed satellite operators] do not hold Commission licenses, *we are applying the procedural framework of Section 316*, bearing in mind our [WTO] commitments to treat satellite operators licensed in [WTO member countries] . . . no less favorably than we treat U.S.-licensed satellite operators.” *Use of Returned Spectrum in the 2 GHz Mobile Satellite Service Frequency Bands*, Order, 20 FCC Rcd 19696, 19697 n.3 (2005) (emphasis added); *see also id.* at 19704 ¶ 18.

3.7-4.2 GHz spectrum to enable the substantial benefits 5G will deliver to U.S. consumers and the U.S. economy will serve the public interest.<sup>2</sup>

We explained that repurposing 3.7-4.2 GHz spectrum and reducing spectrum access rights under the particular facts here will not effect a “fundamental change” for these companies under Section 316 precedent.<sup>3</sup> The SSOs present unique circumstances: the record shows that the SSOs have no U.S. customers in the continental United States (“CONUS”) and no CONUS business or revenue. So, some modification of their U.S. market access grants would not be a “fundamental” change under Section 316 precedent because it would not “create a hindrance of service for its clientele” – particularly as they would retain the right to operate in any upper portion of the C-band that is not repurposed for terrestrial use.<sup>4</sup> While Eutelsat provides C-band service in the United States, it has submitted evidence demonstrating that it can deliver its existing U.S. C-band traffic in a subset of the 3.7-4.2 GHz band.<sup>5</sup> Its satellite transponder migration plan shows that traffic currently delivered via the lower portion of the band can be relocated higher in the band, with additional excess capacity to spare.<sup>6</sup> Under these particular circumstances, the Commission has the flexibility to modify Eutelsat’s U.S. market access grants as the operator has acknowledged that it can provide “essentially the same service” in a lesser amount of spectrum.<sup>7</sup> Although the Commission has the legal authority here to modify the SSO and Eutelsat market access grants, the Commission should encourage these entities to work with other C-band authorization holders to repurpose this band (and to facilitate a speedy transition and clearing process to do so).

Ultimately, the most effective and expeditious way to repurpose spectrum in the 3.7-4.2 GHz band is a private market auction and repacking of the band. The Commission should act on this framework. In doing so, we encouraged the Commission to provide guidance to ensure a

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<sup>2</sup> 47 U.S.C. § 316(a) (granting the FCC authority to modify “[a]ny station license or construction permit” if in its judgment doing so “will promote the public interest, convenience, and necessity”).

<sup>3</sup> *Community TV, Inc. v. FCC*, 216 F.3d 1133, 1140-41 (D.C. Cir. 2000) (citing *MCI Telecommunications Corp. v. AT&T*, 512 U.S. 218 (1994)); *see also, e.g., Celco Partnership v. FCC*, 700 F.3d 534, 543 (D.C. Cir. 2012) (“[T]he Commission’s section 316 power to ‘modif[y]’ existing licenses does not enable it to fundamentally change those licenses.”) (citation omitted).

<sup>4</sup> *California Metro Mobile Communications, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 22974, 22977 ¶ 12 (2002); *see also California Metro Mobile Communications, Inc. v. FCC*, 365 F.3d 38, 46 (D.C. Cir. 2004) (affirming Commission decision finding that “the modification would leave CMMC’s other frequencies intact and that, to the extent it caused a ‘minor’ disruption in CMMC’s operations, it was ‘nonetheless in the public interest, as required by [s]ection 316.’”) (citation omitted).

<sup>5</sup> Letter from Eutelsat S.A. to FCC, GN Docket No. 18-122 (filed Apr. 9, 2019).

<sup>6</sup> *Id.* at Attachment (showing transponder capacity in the upper portion of the band as “[p]ossibly used within Conus”).

<sup>7</sup> *Community TV*, 216 F.3d. at 1141.

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transparent, fair, and open auction process and reiterated the importance of facilitating a transition that ensures continued content distribution without disruption.

Sincerely,

A handwritten signature in black ink, appearing to read "William H. Johnson". The signature is fluid and cursive, with a large initial "W" and a stylized "H".

William H. Johnson  
Senior Vice President

cc: Tom Johnson  
Ashley Boizelle  
Deborah Broderon  
Michael Carlson  
Matthew Dunne  
David Horowitz  
Bill Richardson  
Matthew Pearl