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November 7, 2019

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Eutelsat S.A., Notice of *Ex Parte* Communication, GN Docket No. 18-122;  
RM-11791; RM-11778**

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Dear Ms. Dortch:

On November 5, 2019, Julie Burguburu, Group General Counsel, and Wladimir Bocquet, Director of Regulatory Affairs, Spectrum Management & Policy, both of Eutelsat S.A. (“Eutelsat”), together with Richard R. Cameron and the undersigned, both of LMI Advisors, met in separate meetings with Bill Davenport, Chief of Staff for Commissioner Starks; Will Adams, Legal Advisor to Commissioner Carr; Erin McGrath, Legal Advisor to Commissioner O’Rielly; Umair Javed, Legal Advisor to Commissioner Rosenworcel; and the Commission representatives listed in **Exhibit A** to this letter to discuss Eutelsat’s positions in the above-referenced proceedings.

Eutelsat explained that it continues to support a market-based approach to the reallocation of a portion of 3.7-4.2 GHz spectrum for terrestrial mobile “5G” use within the 48 contiguous United States (“CONUS”). At the same time, Eutelsat is concerned that current proposals in the record of this proceeding lack sufficient detail, transparency, and competitive neutrality to permit the Commission to conclude that they would comport with basic principles of fundamental fairness and serve the public interest.

### **Summary of Eutelsat’s Transition Principles**

In reallocating spectrum to mobile 5G use, the Commission should pursue an approach that achieves the following policy goals:

- A fair, transparent, auction process that meets the criteria set forth in the recent statement of Auction Principles filed by the C-Band Alliance, AT&T, Verizon, U.S. Cellular, Bluegrass Cellular, and Pine Belt Wireless;<sup>1</sup>
- A streamlined transition that clears existing users of C-band services from the reallocated spectrum quickly and cooperatively with minimal administrative burdens and processes, in accord with the 18-month and 36-month milestones proposed in the Auction Principles Letter;

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<sup>1</sup> See *Ex Parte* Letter from C-Band Alliance, AT&T, Verizon, U.S. Cellular, Bluegrass Cellular, and Pine Belt Wireless, GN Docket No. 18-122, filed Oct. 29, 2019 (“Auction Principles Letter”).

- A fair, transparent, and competitively neutral transition framework that places primary, enforceable responsibility with the C-band satellite operators for managing the transition of their own customers' services out of the affected spectrum.

Eutelsat proposed that the Commission adopt an approach to these goals based on the principles set forth in **Exhibit B**, which was distributed in the meetings.

The approach Eutelsat described would be based on the elements discussed below.

*First*, Eutelsat proposed that the Commission reallocate 300 MHz of C-band spectrum (280 MHz + 20 MHz) between 3.7-4.2 GHz to mobile 5G services throughout the CONUS. The Commission should closely oversee and control the auction of this spectrum to ensure a fair, transparent, equitable, and impartial auction and proceeds distribution process. Eutelsat agrees with the Auction Principles Letter that FCC Auction 102 would provide a strong template.

*Second*, Eutelsat proposes that the Commission prescribe the allocation of the auction proceeds, both to the U.S. Treasury, and among the C-band satellite operators. Eutelsat suggested that U.S. taxpayers should receive the benefit of depositing up to 50 percent of the auction proceeds in the U.S. Treasury. The remainder should be allocated among C-band satellite operators authorized by the Commission based on a formula that considers each operator's CONUS revenues and stranded satellite capacity capable of serving CONUS, adjusted in each case for the remaining useful life of the included satellites. Mathematically, the shares would be determined based on a factor computed according to the following formula:

$$ServiceLifeScore * (W * SupplyShare + (1 - W) * RevenueShare)$$

Where:

$$W = 0.75$$

*ServiceLifeScore* is an index of the average remaining service life of each C-band satellite as of the start date of the transition

*SupplyShare* for each C-band satellite operator authorized by the Commission is the portion of that operator's C-band capacity capable of serving any portion of the CONUS, determined based on the FCC's Space Station Approval List.

*RevenueShare* represents the satellite operator's share of revenues generated from C-band services provides to CONUS earth stations.

This allocation of the auction proceeds would be made available to the C-band satellite operator to provide compensation for reasonable transition costs and financial incentives for itself and its affected customers to complete the transition quickly and cooperatively.<sup>2</sup>

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<sup>2</sup> Allocation of proceeds based on revenue share only would introduce unnecessary legal risk because, regardless of revenue from CONUS C-band customers, C-band satellite operators are relinquishing spectrum, will face a fundamental change to their authorizations, and have made sunk capital investments in satellite capacity to serve the United States, which they will be required to abandon if the Commission moves forward with this transition.

*Third*, the FCC and each affected C-band satellite operator would enter into binding and enforceable direct bilateral commitments for the satellite operator to meet the Commission's prescribed timetable for clearing tranches of C-band spectrum and managing the transition of its customers' out of the affected spectrum. Eutelsat suggested that the Commission could require each C-band satellite operator to clear 100 MHz of spectrum at 3.7-3.8 GHz in the top 50 CONUS Partial Economic Areas (PEAs) within 18 months following the close of the auction, subject to any necessary adjustments to accommodate TT&C or gateway earth stations, and 300 MHz of spectrum throughout the CONUS within 36 months after the close of the auction.

Once the allocation of revenue to each C-band satellite operator and the spectrum clearing targets and timelines are established, each C-band satellite operator would have market-based flexibility to meet the transition needs of its own customers, whether through installation of filters or new low noise block (LNB) downconverters to ensure continuation of existing C-band service, modifying or replacing the C-band earth station to enable satellite-based service using another band, providing funding for the customer to migrate to terrestrial fiber or other alternative technologies, or other mutually agreed solutions. Eutelsat expressed a willingness to consider submission of a report, no later than the start of the transition period, identifying each of its customers' affected earth stations and its initial rebanding plan and cost estimate, which would provide important data to help set the aggregate reserve price for the auction.

To the extent that the Commission concludes that additional safeguards may be warranted to ensure the transition interests of earth station licensees are more fully protected, the Commission could appoint a competitively neutral transition monitor that could receive transition and evaluating reports, track and report to the Commission on transition progress, and serve as an initial forum for addressing transition disputes. The cost of such a third-party transition monitor would be paid from auction proceeds, would help conserve the Commission's scarce administrative resources, and would help ensure that the interests of affected parties are fully considered in the transition.

At the close of each milestone period (*e.g.*, at the end of the 18- and 36-month illustrative periods discussed above), each C-band satellite operator would be required to file a certification that it has complete the clearing of the corresponding spectrum tranche. As the affected spectrum is cleared, each participating C-band satellite operator shall be entitled to distribution of its own allocation pursuant to the following illustrative schedule:

- 10 percent of proceeds allocated to that operator paid within 15 days of U.S. Treasury receipt of payments from 5G auction winners (to facilitate transition).
- 15 percent of proceeds allocated to that operator within 15 days of certification that it has cleared 100 MHz of spectrum at 3.7-3.8 GHz in the top 50 CONUS PEAs, subject to any necessary adjustments to accommodate TT&C or gateway earth stations, within 18 months of the 5G auction closing date.
- 75 percent of proceeds allocated to that operator within 15 days of certification that it has cleared 300 MHz of spectrum throughout the CONUS within 36 months of the 5G auction closing date

If a certification is made after the applicable deadline, the amount allocated to that operator for satisfying the relevant milestone should be reduced, for example, by one-tenth for each month of delay in making such certification (*i.e.*, a 10-month or greater delay will result in no payment to the satellite operator associated with the milestone).

### **Benefits of this Approach**

Eutelsat believes that this approach offers several benefits in comparison to other proposals before the Commission.

*First*, it offers greater fairness, transparency, and competitive neutrality than previous approaches. Regarding the auction, an experienced auctioneer conducting an auction in accordance with the functionality, structure, and procedures established by the Commission and used in Auction 102 promises greater predictability and certainty, with lower operational risk, than other, more novel approaches.

On the transition side, this proposal would place the obligation to conduct the transition and clear the affected spectrum squarely and directly with the C-band satellite operators themselves, which are the parties best positioned to accomplish the task. The C-band satellite operators are most familiar with their own customers' needs, and best positioned to work cooperatively with them to effect the transition in a complete and timely manner, according to voluntary, market-based arrangements.

*Second*, the proposal would substantially streamline the administrative burden of the transition. By fixing the allocated amount for which each satellite operator would be eligible at the outset, the proposal would eliminate the administrative need to ascertain whether individual transition costs are eligible or reasonable, as well as any need for detailed cost reporting or approval by any third party. Under this approach, C-band satellite operators would have maximum discretion to pursue the most effective and expeditious transition approach in consultation with each customer, whether that were to entail modifying or replacing earth stations, moving services to other satellite bands, constructing and launching new satellites, or deploying alternative technologies, such as terrestrial fiber or other alternative technologies.

In fact, by establishing a fixed allocation of auction proceeds to each individual C-band satellite operator, which would comprise both direct transition costs and additional incentive compensation, Eutelsat believes that its proposal would altogether eliminate the need for a formal transition administrator. Rather, each C-band satellite operator would have discretion, based on its own resources and needs, either to hire outside resources, such as the C-Band Alliance or other experts, to complete discrete transition tasks, or to complete the transition process itself using internal resources.

*Third*, this approach would promote fairness, transparency, and competitive neutrality. The Commission has long history in a variety of contexts of providing regulatory frameworks that promote fair competition, without favoring individual competitors. In previous spectrum transitions, if a Transition Administrator was needed, the Commission took great care to identify a competitively neutral party that would not be subject to any perception of partiality, bias, or

discriminatory conduct.<sup>3</sup> For example, at the start of the 800 MHz transition, the Commission determined to appoint a Transition Administrator and required the chosen entity to be “an independent individual or company . . . subject to oversight by the Commission . . . with no financial interest in any 800 MHz licensee.”<sup>4</sup> A transition administrator or facilitator controlled by a subset of C-band satellite operators would be incapable of filling such a competitively neutral role here.

### **The Path Forward**

Eutelsat has taken note of the Chairman’s expressed intent to show progress in this proceeding before the end of this year.<sup>5</sup> At the same time, Eutelsat is concerned that the current proposals in the record (i) do not sufficiently reflect the sort of fair, equitable, transparent, and competitively neutral outcome that would serve the public interest; and (ii) do not offer sufficient detail to demonstrate that they can be executed quickly and successfully with a minimum of operational risk. These concerns are brought into even sharper relief in the case of proposals in the record that rely heavily on private sector parties, often untested and under-resourced, to execute novel and unprecedented approaches on an accelerated timeline that leaves little room for error.

In the face of such challenges, and in the unique circumstances of this transition where satellite C-band satellite operators are able and incentivized to effect the transition of their customers in the 3.7-4.2 GHz band efficiently and cooperatively, Eutelsat believes that the Commission can extend a market-based approach to the transition itself. Thus, the Commission should move this proceeding forward by deciding those issues on which the record shows maturity and consensus, while affording more time for solutions to emerge in more difficult and controversial areas, such as the nature and structure of an efficient, equitable, transparent, and competitively neutral transition framework. Eutelsat agrees with AT&T that the Commission can and should move forward with an order making clear that 300 MHz of C-band spectrum will be reallocated in the CONUS for terrestrial “5G” services, as well as the general process by which the reallocation will be accomplished, while seeking further comment on the transition plan and the technical and service rules to apply to this spectrum.<sup>6</sup>

In particular, Eutelsat believes that a transition administrator may be unnecessary given the unique nature of C-band satellite services, although a transition monitor could provide a backstop for addressing transition concerns and to help ensure that progress is made consistent with milestones to be established by the Commission. If the Commission were to appoint a transition administrator or monitor, it should ensure (as it did in the 800MHz transition) that the

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<sup>3</sup> See *supra* n.1.

<sup>4</sup> *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, FCC 04-168, 19 FCC Rcd 14969 (2004), at ¶ 191.

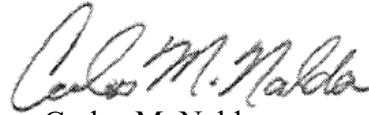
<sup>5</sup> See, e.g., Remarks of Chairman Pai, at the 8th Annual Americas Spectrum Management Conference (Sept. 24, 2019).

<sup>6</sup> See *Ex parte* Letter from Michael P. Goggin, AT&T, GN Docket No. 18-122 (filed Nov. 1. 2019), at 6.

appointed entity is independent, acts under the sole oversight of the Commission, and lacks any affiliation or financial interest in any C-band licensee.

Please do not hesitate to contact me with any questions regarding this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Carlos M. Nalda', written in a cursive style.

Carlos M. Nalda  
*for Eutelsat S.A.*

Attachments

*Exhibit A - FCC Meeting Participants*

*Exhibit B - FCC Meeting Handout*

cc (w/ att.): All meeting participants

**Exhibit A**  
**FCC Meeting Participants**

Wireless Telecommunications Bureau

Matthew Pearl  
Becky Schwartz  
Paul Powell  
Brian Wondrack  
Anna Gentry

International Bureau

Kerry Murray

Office of Economics and Analytics

Giulia McHenry  
Pat DeGraba  
Evan Kwerel  
Paul LaFontaine

Office of Engineering and Technology

Julius Knapp

**Exhibit B**  
**FCC Meeting Handout**

**PROPOSED PRINCIPLES FOR 3.7-4.2 GHz C-BAND TRANSITION**  
**GN Docket No. 18-122; RM-11791; RM-11778**

**The 5G Auction**

- The FCC should reallocate 300 MHz (280 + 20 MHz) of spectrum between 3.7-4.2 GHz to terrestrial mobile 5G services in the contiguous United States (CONUS).
- The FCC should control the auction to avoid delay and ensure a fair, transparent, equitable, and impartial auction and proceeds distribution process.
- The auction should be conducted as described in the Auction Principles recently filed by the C-Band Alliance (CBA) and in accordance with the structure of FCC Auction 102.

**Allocation of Auction Proceeds**

- The FCC should retain a portion of the auction proceeds (up to 50%) in the U.S. Treasury.
- The FCC should prescribe an allocation of the remaining proceeds for each of the C-band satellite operators based on a formula that considers each operator's CONUS revenues and stranded satellite capacity capable of serving CONUS as of Fiscal Year 2017.
- Each C-band satellite operator should be entitled to distribution of its own allocation pursuant to a staged payment schedule, with penalties for missing transition milestones.

**Spectrum Clearing Commitments**

- The satellite operators themselves are the only entities that are both capable of implementing the transition and subject to the enforcement jurisdiction of the FCC, so the FCC should impose transition obligations directly on each C-band satellite operator.
- The FCC should require each C-band satellite operator to clear 100 MHz of spectrum at 3.7-3.8 GHz in the top 50 CONUS Partial Economic Areas (PEAs) within 18 months, subject to any necessary adjustments to accommodate TT&C or gateway earth stations, and 300 MHz of spectrum throughout the CONUS within 36 months.
- Each C-band satellite operator would have market-based flexibility to manage the transition of its customers' services out of the affected spectrum.
- The C-band satellite operators may elect to subcontract specific rebanding tasks to a transition administrator or facilitator such as the CBA.

**Benefits of this Structure**

- Accelerates the start of the auction and conduct of the transition process.
- Promotes transparency, fairness, and competitive neutrality.
- Places clear and enforceable transition obligations on the satellite operators that are responsible for clearing the spectrum and meeting the transition needs of their customers.
- Creates powerful incentives for satellite operators to meet customer needs in a complete and timely manner, all according to voluntary, market-based arrangements.
- Minimizes the administrative burden associated with the transition of spectrum to 5G.