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## Ex Parte – Via ECFS

November 17, 2020

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

### **Re: Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service, Docket No. RM-11768**

Dear Madam Secretary:

On behalf of the Competitive Enterprise Institute (CEI), we respectfully ask the FCC to issue a Notice of Proposed Rulemaking that seeks public comment on the petition for rulemaking filed in 2016 by the MVDDS 5G Coalition.<sup>1</sup> The coalition has urged the Commission to issue rules “designed to permit MVDDS licensees to use their 12.2-12.7 GHz spectrum to provide two-way mobile broadband service.”<sup>2</sup> As a public interest organization dedicated to the principles of limited constitutional government and free enterprise, CEI believes the Commission should explore the Coalition’s petition by initiating this rulemaking proceeding.

We strongly support the FCC’s longstanding goal of ensuring that its rules allow for spectrum to be put to its highest and best use.<sup>3</sup> In recent years, the Commission has initiated several proceedings to repurpose spectrum to accommodate commercial wireless services, including fifth-generation (5G) mobile broadband networks.<sup>4</sup> In this proceeding, holders of multichannel video distribution and data services (MVDDS) licenses ask the Commission to revise its rules to allow them to provide two-way mobile broadband service.<sup>5</sup> We believe the Commission should carefully consider this proposal through the process of notice and comment rulemaking.

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1. Petition for Rulemaking of the MVDDS 5G Coalition (Apr. 26, 2016), RM-11768, *available at* <https://www.fcc.gov/ecfs/filing/60001658886> [“MVDDS Petition”].

2. *Id.* at 1.

3. *See, e.g., Use of the 5.850-5.925 GHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd 12603, 12604, para. 2 (Feb. 6, 2020).

4. *See* NTIA, Annual Report on the Status of Spectrum Repurposing, at 2–5 (2019), *available at* [https://www.ntia.doc.gov/files/ntia/publications/spectrum\\_repurposing\\_report\\_august\\_2019.pdf](https://www.ntia.doc.gov/files/ntia/publications/spectrum_repurposing_report_august_2019.pdf).

5. MVDDS Petition at 16.

In the 12.2–12.7 GHz band, 500 MHz of contiguous spectrum is currently allocated to MVDDS licensees to be used for one-way digital fixed non-broadcast service.<sup>6</sup> This spectrum is also currently assigned to non-geostationary satellite orbit fixed-satellite services (NGSO FSS) on a co-primary basis.<sup>7</sup> The MVDDS petition asks the FCC to alter its rules so that MVDDS licensees can provide two-way mobile broadband service—such as 5G—while designating the satellite assignments as secondary.<sup>8</sup>

Space Exploration Technologies Corp. (SpaceX), an aerospace company that recently launched a constellation of over 700 satellites (and counting) in non-geostationary orbit, opposes the MVDDS petition.<sup>9</sup> Currently in beta testing,<sup>10</sup> SpaceX’s satellite constellation, known as Starlink, aims to provide low-latency, high-speed satellite Internet access to unserved and underserved consumers in the United States and around the world.<sup>11</sup> We applaud SpaceX’s efforts to deploy broadband to traditionally underserved areas and look forward to the continued deployment of Starlink’s constellation. And we strongly support private sector efforts to expand broadband availability to areas where deploying traditional, fixed services is not economically feasible.

The FCC has yet to determine whether MVDDS licensees could offer two-way mobile broadband services using the 12.2–12.7 GHz band in a way that co-exists with fixed-satellite services. Nor has the Commission yet to determine whether the ability of fixed-satellite services to deploy high-speed, low-latency, nationwide broadband would be materially impaired if NGSO FSS carriers needed to accommodate constraints on their transmissions in the 12.2–12.7 GHz band to prevent harmful interference with MVDDS licensees.

The record in this proceeding reflects conflicting views about the extent to which allowing MVDDS licensees to permit two-way communications would interfere with NGSO FSS providers. The MVDDS 5G Coalition argues that “targeted, small cell deployments” and “advanced antenna techniques” mitigate the risk of interference with satellite services.<sup>12</sup> And RS Access has observed that the Commission has “successfully developed sharing frameworks in multiple bands” since the petition

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6. *Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 4096 (2000).

7. *See Amendment of Parts 2 and 25 of the Commission’s Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band with Frequency Range*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, 9624, para. 19 (2002).

8. MVDDS Petition at 22.

9. *See, e.g.*, Notice of Ex Parte of SpaceX (Oct. 15, 2020), *available at* <https://www.fcc.gov/ecfs/filing/101548191460>.

10. Michael Sheetz, *SpaceX prices Starlink satellite internet service at \$99 per month, according to e-mail*, CNBC.COM (Oct. 27, 2020), <https://www.cnbc.com/2020/10/27/spacex-starlink-service-priced-at-99-a-month-public-beta-test-begins.html>.

11. *Space Exploration Holdings, LLC, Application for Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System*, Memorandum Opinion, Order, and Authorization, 33 FCC Rcd 3391, 3392(2018), *available at* <https://www.fcc.gov/document/fcc-authorizes-spacex-provide-broadband-satellite-services>.

12. MVDDS Petition at 18.

for rulemaking was filed.<sup>13</sup> In contrast, several satellite providers argue that “two-way, terrestrial mobile operations are fundamentally incompatible with 12 GHz NGSO FSS operations.”<sup>14</sup>

The MVDDS licensees are co-primary in the 12.2–12.7 GHz band, having invested over \$118 million at auction to acquire their licenses.<sup>15</sup> Meanwhile, the firms that hold FCC authorizations to use, *inter alia*, the 12.2–12.7 GHz band to provide satellite services do not hold exclusive licenses to operate on this band. Moreover, NGSO FSS operators are not limited to the 12.2–12.7 GHz band; for instance, the Commission has granted SpaceX authorizations to operate in the 10.7–12.7 GHz, 12.75–13.25, 13.85–14.5 GHz, 17.8–18.6 GHz, 18.8–19.3 GHz, 19.7–20.2 GHz, 27.5–29.1 GHz, and 29.5–30 GHz frequency bands.<sup>16</sup> Given these alternative bands in which NGSO FSS operators possess authorizations, whether allowing two-way communications in the 12.2–12.7 GHz band would impair satellite broadband remains a contested issue.

Neither the MVDDS licensees nor NGSO satellite providers enjoy a presumptive entitlement to use the 500 MHz in question as they see fit. Nor does either set of entities hold a quasi-property interest in this spectrum band that warrants deference from the Commission. Rather, in determining whether to adjust its rules in the manner requested by the MVDDS 5G Coalition, the Commission’s task is to carefully consider whether consumers would likely realize greater benefits if the 500 MHz at issue were primarily used for terrestrial 5G broadband services—or for satellite broadband.

In issuing a notice of proposed rulemaking in this proceeding, the Commission should seek comment on the reliance interests of the firms that have deployed fixed-satellite services that make use of the 12.2–12.7 GHz band. To what extent have SpaceX and other companies invested in deploying satellites, ground stations, and other infrastructure that would be adversely affected by the sort of interference that might arise if the band were used for terrestrial 5G services? Would the changes requested by the MVDDS 5G Coalition interfere with distinct investment-backed expectations of companies that hold NGSO FSS authorizations?<sup>17</sup> How much would satellite providers need to spend to modify their systems to accommodate potential interference resulting from two-way, terrestrial services? As several groups have urged, the Commission should issue a “neutral NPRM that asks tough questions of all stakeholders regarding the 12 GHz Band so the Commission can develop the necessary record to make an informed decision on its future.”<sup>18</sup>

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13. Ex Parte of RS Access, LLC, at 2 (Oct. 26, 2020), *available at* <https://ecfsapi.fcc.gov/file/1026241813726/RS%20Access%20-%20Response%20to%20Third-Party%20Groups%2010.26.20.pdf>.

14. Ex Parte of OneWeb, SpaceX, SES S.A., AT&T, Intelsat, and Kepler Communications, at 2 (Oct. 20, 2020), *available at* <https://ecfsapi.fcc.gov/file/10201928610093/Joint-Letter-12GHz-Operators-RM11768-10-20-2020-SUB.pdf>.

15. *Requests of Ten Licensees of 191 Licenses in the Multichannel Video and Data Distribution Service for Waiver of the Five-Year Deadline for Providing Substantial Service*, Order, 25 FCC Rcd 10097, 10103, para. 11 (2010), *available at* <https://www.fcc.gov/document/requests-ten-licensees-191-licenses-multichannel-video-and>.

16. *Space Exploration Holdings, LLC, Application for Approval for Orbital Deployment and Operating Authority for the SpaceX NGSO Satellite System*, Memorandum Opinion, Order, and Authorization, 33 FCC Rcd 3391, 3401, para. 25 (2018), *available at* <https://www.fcc.gov/document/fcc-authorizes-spacex-provide-broadband-satellite-services>.

17. *Cf. Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

18. Ex Parte Presentation of Competitive Carriers Association, Computer & Communications Industry Association, INCOMPAS, Open Technology Institute at New America, and Public Knowledge, at 2 (Oct. 30,

Respectfully submitted,

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2020), *available at*

<https://ecfsapi.fcc.gov/file/10301894525574/FINAL%2012%20GHz%20NPRM%20Assoc%20PI%20letter%2030%20OCT%2020.pdf>.