

21 November 2019

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

Early in this proceeding, the Small Satellite Operators (SSOs)—ABS Global Ltd., Claro S.A. and Hispasat S.A.—recognized that all of the parties most directly affected by repurposing C-band agreed with several core principles, and thus a consensus was within reach.¹ With the recent helpful *ex parte* filings by AT&T and other wireless carriers² and by Eutelsat³—and with the decision by Chairman Pai to pursue a public auction—the SSOs believe that this consensus is coming into clearer focus. The SSOs think that by combining and tweaking the approaches suggested by AT&T, Eutelsat, and others, the Commission can rapidly and fairly repurpose 300 megahertz of spectrum for 5G services—and create a massive amount of capital for investment in our telecommunications infrastructure that will help ensure no community is left behind.

I.

The SSOs believe there are a variety of ways for the FCC to conduct a public auction of C-band spectrum, while ensuring that taxpayers, earth station operators (“ESOs”), and satellite operators are treated fairly—and that longstanding pro-investment spectrum policies are not undermined. One way would be to pick up on the suggestion by AT&T that the Commission “add a terrestrial use component” to satellite authorizations, “but specify that those flexible use rights would have to be collectively assigned, within a stated period, through an auction process in order to, among

¹ See Letter from Scott Blake Harris and Shiva Goel, Counsel, SSOs, to Marlene H. Dortch, FCC, at 1 & n.1, GN Docket No. 18-122 (filed Mar. 25, 2019).

² See Letter from Michael P. Goggin, AT&T, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed Nov. 1, 2019) (“AT&T Nov. 1, 2019 Ex Parte”); Letter from Hank Hultquist, AT&T; William H. Johnson, Verizon; Grant Spellmeyer, U.S. Cellular; Ron Smith, Bluegrass Cellular; John C. Nettles, Pine Belt Wireless, and Peter Pitsch, the C-Band Alliance, to Marlene H. Dortch, FCC, at Attachment p.2, GN Docket No. 18-122 (filed Oct. 29, 2019) (“Auction Principles Ex Parte”).

³ See Letter from Carlos M. Nalda, Eutelsat, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed Nov. 7, 2019) (“Eutelsat Nov. 7, 2019 Ex Parte”).

other things, fund the transition of existing C-band users.”⁴ The Commission has used this basic approach to repurpose spectrum, including satellite spectrum, for flexible use in the past.⁵

The Commission then could attach two additional conditions to ensure a reasonable outcome to this proceeding:

First, the Commission could require satellite operators to allow the FCC to conduct the auction on their behalf and on behalf of U.S. taxpayers. Though perhaps unprecedented, this approach would have merit here given the unique ownership structure of the lower C-band. It would avoid the potential unfairness and litigation risk associated with allowing a group of *three* satellite operators to sell spectrum in a band where *eight* operators hold similar rights, and where taxpayers possess a specific interest that “goes well beyond the public’s general stake in ensuring that spectrum is used effectively.”⁶ It also would lay the groundwork for ensuring that incumbent licensees are reasonably compensated without holding a reverse auction, which the record shows may well prove unworkable in this band.⁷

Second, the Commission could require satellite operators to accept a distribution of proceeds that ensures the public auction complies with Section 316, advances the principles underlying Section 309(j), encourages wireless investment over the long-term, and overcomes the collective action problems inherent in the C-band’s non-exclusive licensing regime. Whether it sets a “reserve charge” payable by prospective bidders,⁸ or allocates revenues received at auction, the Commission must “decide the entities that would be entitled to receive payments . . . and the percentage that each payee would receive,” as T-Mobile, AT&T, Eutelsat, Charter, and the SSOs all have recognized.⁹

Since little attention has so far been focused on distribution issues, the SSOs are submitting this *ex parte* to help move this proceeding along. As explained below, the SSOs continue to believe that taxpayers should receive a substantial portion of the proceeds, and that earth station operators should be financially incented to assist in the band-clearing effort. Both streams would ensure that Americans capture the benefits of the repurposing, including in rural America, where many C-

⁴ See Letter from Michael P. Goggin, AT&T, to Marlene H. Dortch, FCC, at 2, GN Docket No. 18-122 (filed Nov. 14, 2019) (“AT&T Nov. 14, 2019 Ex Parte”).

⁵ See, e.g., Letter from Scott Blake Harris and Shiva Goel, Counsel, SSOs, to Marlene H. Dortch, FCC, at 3, GN Docket No. 18-122 (filed Oct. 9, 2019) (“SSO Oct. 9, 2019 Ex Parte”); see also Comments of AT&T at 3-6, GN Docket No. 18-122 (filed July 3, 2019).

⁶ See Comments of the Small Satellite Operators at 18, GN Docket No. 18-122 (filed July 3, 2019) (“SSO July 2019 Comments”).

⁷ See *id.* at 19-27.

⁸ See Letter from Elizabeth Andrion, Charter Communications, and Howard J. Symons, Jenner & Block LLP, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed Feb. 22, 2019) (“Charter Feb. 22, 2019 Ex Parte”); Letter from Steve B. Sharkey, T-Mobile, to Marlene H. Dortch, FCC, GN Docket No. 18-122 at 8 (filed Nov. 15, 2019) (“T-Mobile Nov. 15, 2019 Ex Parte”).

⁹ See T-Mobile Nov. 15, 2019 Ex Parte at 8. See also Eutelsat Nov. 7, 2019 Ex Parte at 1; Charter Feb. 22, 2019 Ex Parte at 2; AT&T Nov. 1, 2019 Ex Parte at 3.

band earth stations are located. The SSOs also believe that by using a distributional framework driven by the market and the nature of satellite licensing under FCC rules, the Commission can ensure that all satellite operators are fairly compensated for relinquishing their spectrum use rights as part of a public auction. But the SSOs also agree with AT&T that these issues should be addressed in a further notice of proposed rulemaking.¹⁰ As T-Mobile explains, auction procedures are often addressed after an order establishes the fundamental operation and objectives of an FCC auction, and the need for efficiency warrants the same approach here.¹¹

II.

U.S. Treasury payments must be significant. The SSOs have argued from the beginning of this proceeding that U.S. taxpayers should receive a substantial percentage of the gross proceeds generated by the auction of C-band spectrum.¹² With any sort of public auction, it seems obvious that a significant share of the proceeds (as determined by the FCC or Congress) should go to the U.S. Treasury. While the use of these proceeds would, of course, be determined by Congress, the SSOs believe these federal funds could be focused on specific programs to enhance our country's telecommunication infrastructure—especially in rural communities. When combined with the SSO proposal described below for the direct injection of proceeds through ESO incentives, this auction presents a unique opportunity for the FCC and Congress to make a meaningful difference in bridging the U.S. digital divide.

Incentive payments should be provided to ESOs to drive investment in local communities. The SSOs also have argued from the beginning of this proceeding that ESOs should receive strong financial incentives for relocating from the repurposed portion of C-band in a prompt and efficient manner. The SSOs continue to hold that view. Many of these ESOs are located in rural areas that face unique challenges in accessing broadband connectivity and “any G,” much less 5G, service. By significantly incentivizing each and every ESO, a significant portion of the overall auction proceeds can be injected directly into these communities, and can empower ESOs to invest in connectivity solutions that facilitate bridging the digital divide.

III.

Distribution of proceeds among satellite operators. Perhaps the most challenging step to achieving a fair outcome in this proceeding is developing a mechanism to compensate fairly all satellite operators that will lose spectrum rights. While the CBA has consistently suggested that the Commission simply confiscate its competitors' spectrum rights because they did not have U.S.-

¹⁰ See AT&T Nov. 1, 2019 Ex Parte at 5.

¹¹ T-Mobile Nov. 15, 2019 Ex Parte at 4.

¹² See, e.g., Reply Comments of the Small Satellite Operators at 1, 5-6, 8, 22-26, GN Docket No. 18-122 (filed Dec. 11, 2018); Letter from Scott Blake Harris, Counsel, SSOs, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed Dec. 18, 2018); Letter from Scott Blake Harris and Shiva Goel, Counsel, SSOs, to Marlene H. Dortch, FCC, at 7-9, GN Docket No. 18-122 (filed Mar. 25, 2019); SSO July 2019 Comments at 18; Reply Comments of the Small Satellite Operators at ii, 22, GN Docket No. 18-122 (filed July 18, 2019) (“SSO July 2019 Reply Comments”); SSO Oct. 9, 2019 Ex Parte at 1.

derived C-band revenues in 2017,¹³ the record clearly demonstrates that the CBA's position makes no policy, legal, or economic sense—and is supported only by naked greed.¹⁴ As AT&T and other carriers that depend on FCC spectrum licenses have acknowledged, *all* eight operators authorized to serve the United States in the C-band—and not just the three that comprise the CBA—should be allowed to relinquish their spectrum use rights voluntarily in the auction process.¹⁵

One challenge before the Commission is to create a fair and efficient mechanism for such an exchange in a band licensed to multiple satellite operators on a non-exclusive basis. To address that issue, the SSOs have prepared a simple model for the distribution of the satellite-operator proceeds generated by a partial repurposing of the C-band (the “Distribution Model”). The Distribution Model presents a reasonable, easily administered, objective, and economically rational mechanism for overcoming the problem of non-exclusive licensing. It has been designed to allow the Commission to auction C-band spectrum quickly and with minimal legal risk—and without jeopardizing the future of wireless investment. The SSOs believe that the Commission should adopt this Distribution Model as part of the auction rules for C-band spectrum.

The SSOs' proposed Distribution Model. The Distribution Model, described in the attachment to this *ex parte*, determines each company's share of satellite-operator proceeds by recognizing that satellite operators should be compensated for capital expenditures affected by repurposing C-band spectrum, and separately for their relinquishment of spectrum use rights. First, it computes each operator's share of the total amount of capital that would be impaired by a repurposing, after accounting for depreciation using the straight-line method (the “Expended Capital Component”). To do this, the model uses the percentage of remaining useful life as a proxy for each satellite's depreciated capital expense. It takes the remaining life for each satellite on the Commission's Space Station Approval List (“SSAL”) for the C-band, divides that amount by the satellite's original useful life, and divides the resulting percentage by the sum of the same percentages for all

¹³ See Letter from Jennifer Hindin, Counsel, C-Band Alliance, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed Oct. 14, 2019).

¹⁴ See, e.g., AT&T Nov. 1, 2019 Ex Parte at 3 (explaining that the Commission should adopt procedures to ensure the fairness, efficiency, and lawfulness of any private auction, including rules that “account, to the maximum extent feasible, for the types of concerns raised by the Small Satellite Operators (ABS, Hispasat [S].A., and Claro S.A.; collectively, ‘SSOs’)”); Auction Principles Ex Parte at Attachment p.2 (reflecting wireless carriers' agreement to a number of core principles, including the need to ensure that auction proceeds “fairly compensate incumbent satellite providers *authorized to use the C-Band*”) (emphasis added); Reply Comments of T-Mobile at 34-36, GN Docket No. 18-122 (filed Oct. 29, 2018) (“Reply Comments of T-Mobile”) (emphasizing the importance of compensating taxpayers and treating all eight satellite operators with C-band authorizations fairly); Comments of the Competitive Carriers Association at 31, GN Docket No. 18-122 (filed July 3, 2019) (“Comments of the Competitive Carriers Association”) (same); SSO July 2019 Reply Comments at iii-iv; SSO Oct. 9, 2019 Ex Parte at 1-3; SSO July 2019 Comments at 27-30; Letter from Scott Blake Harris and Shiva Goel, Counsel, SSOs, to Marlene H. Dortch, FCC, GN Docket No. 18-122 (filed Feb. 21, 2019) (“SSO Feb. 21 Ex Parte”). See also Letter from Julie Burguburu, Eutelsat, to Marlene H. Dortch, FCC, GN Docket No. 18-122 at 1 (filed Oct. 3, 2019) (explaining the need for “the proceeds allocation . . . to better represent the interests of all affected stakeholders”).

¹⁵ See AT&T Nov. 1, 2019 Ex Parte; Auction Principles Ex Parte at Attachment p.2; Reply Comments of T-Mobile at 34-36; Comments of the Competitive Carriers Association at 31; Eutelsat Nov. 7, 2019 Ex Parte.

satellites on the SSAL for the C-band.¹⁶ The model then multiplies each satellite's result by the percentage of the lower 300 MHz of C-band licensed to the satellite.

Next, the Distribution Model determines each operator's share of the total amount of spectrum use rights relinquished on a going-forward basis ("Future Spectrum Loss Component"). To do this, the model sums the remaining useful life for all U.S.-authorized C-band satellites, and, for each satellite, divides the satellite's remaining useful life by that sum. Again, each satellite's result is adjusted for the percentage of repurposed frequencies licensed to the satellite.

The Distribution Model then takes a weighted average of the Expended Capital Component and the Future Spectrum Loss Component to produce a final score for each satellite, assigning a weight of .35 to the former and .65 to the latter. These weights reflect the fact that more of the compensation received by satellite operators corresponds to the sale of their spectrum use rights, as opposed to a partial reimbursement for depreciated capital expenditure. Finally, the model determines each operator's share of total satellite-operator proceeds by summing the final score for all satellites in that operator's C-band fleet. In other words, its output is a share per operator of the proceeds remaining after taxpayers and earth station operators are paid first.

The SSO model avoids picking winners and losers by adhering to competitive market principles.

The CBA has long argued that it alone should decide which operators are paid for relinquishing their spectrum use rights and how much, if anything, they would receive. Perhaps unsurprisingly, the CBA proposed to use this power to force the SSOs to give up their spectrum use rights in exchange for virtually nothing—claiming that this bizarre outcome represents the "free market" at work.¹⁷ Yet no "free market," and no capitalist economy in the world, would permit one competitor (much less a cartel of the largest competitors) to set the price at which other, smaller competitors must sell some of their most valuable assets. A public auction would make this construct even more bizarre.

The SSOs' proposed Distribution Model allocates satellite operator proceeds based on objective changes in legal and economic rights, just as the private market would do in the absence of the non-exclusivity problem. The model thus recognizes that companies with more satellites and more overall investment in C-band (like Intelsat and SES) should receive more of the proceeds—and, indeed, under the Distribution Model, more than 86% of the proceeds available to satellite operators would go to five operators other than the three SSOs. But the model also recognizes that a spectrum repurposing will impair an investment in a new, undepreciated satellite much more than an investment in a satellite that has already been fully depreciated. Likewise, it recognizes that the FCC grants authority to operate in C-band on a satellite-by-satellite basis, and that satellites with more years of useful life remaining therefore will experience a greater loss in spectrum use rights. These are realities of the satellite marketplace—and the FCC's licensing regime—that any reasonable distribution methodology must take into consideration. Indeed, as the CBA's own economic expert has stated on the record, the remaining useful life of each satellite, and not past

¹⁶ Consistent with the approach taken by the CBA, the model excludes satellites that do not cover any part of the continental United States. See Joint Comments of Intel Corp., Intelsat License LLC, and SES Americom, GN Docket No. 18-122 at Attachment p. 15 (filed Oct. 29, 2018) ("Bazelon Paper").

¹⁷ See Reply Comments of the C-Band Alliance, GN Docket No. 18-122 at 1 (filed Aug. 14, 2019).

revenues or revenue-based market share, will drive the economic impact of a repurposing on each satellite operator¹⁸—and thus remaining useful life is a key driver of each operator’s share of the proceeds under the Distribution Model.

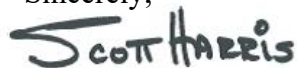
The model avoids confiscation of spectrum under Section 316 and promotes an investment-friendly regulatory environment. As AT&T recently explained, Section 316 of the Communications Act authorizes the Commission to pursue only license modifications that allow licensees “to continue to conduct the business they would be able to conduct under their current licenses with minimal disruption.”¹⁹ Yet a public auction of 60% of satellite operators’ licensed C-band capacity would prevent all of them, including the SSOs, from conducting at least 60% of the C-band business that they are permitted to conduct under their current authorizations—a state of affairs that could never be characterized as “minimally disruptive.” Simply confiscating this percentage of their spectrum use rights is not permissible under the Act, would defy spectrum reallocation precedents, and would undermine incentives to invest in reliance on FCC authorizations for a generation.²⁰ By adopting the SSOs’ proposed Distribution Model, on the other hand, the Commission could ensure that all satellite operators have every incentive to voluntarily relinquish their spectrum use rights—and thus avoid any need to invoke Section 316 and impermissibly force a reallocation upon unwilling licensees.

The model is simple and easily applied. The SSOs believe that the Distribution Model can be readily incorporated into the auction rules the Commission will have to adopt.²¹ Specifically, the Expanded Capital Component assumes that the initial investment in each satellite is roughly the same, which allows it to use the percentage of remaining useful life as a proxy for depreciated capital. The model therefore avoids the overly complex and overly regulatory alternative of collecting proprietary data about specific amounts of dollars invested. Moreover, it relies heavily on the economic analysis already entered into the record by the CBA’s own expert.

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Please contact us with any questions.

Sincerely,



Scott Blake Harris

Shiva Goel

Counsel to the Small Satellite Operators

Attachment

¹⁸ Bazelon Paper at 15.

¹⁹ AT&T Nov. 1, 2019 Ex Parte at 4.

²⁰ See, e.g., SSO Oct. 9, 2019 Ex Parte at 5-6; SSO July 2019 Comments at 19-26; SSO July 2019 Reply Comments; SSO Feb. 21, 2019 Ex Parte.

²¹ *Id.* at 4.

ATTACHMENT

Market-Based Distribution Model for the Satellite Operator Pool



Expended Capital

- Percentage of 3.7–4.0 GHz licensed on each satellite = A
- Original useful life of each satellite = B
- Remaining useful life as of 1/1/2022 = C
- Weighting for Expended Capital (.35) = D

Compensation for Expended Capital
 $(C \cdot A / B) / [\text{sum } C \cdot A / B \text{ for all satellites}] = X$



Loss of Future Spectrum

- Weighting for Future Spectrum Loss
(.65) = E

Compensation for Future Spectrum Loss
 $(C \cdot A) / [\text{sum } C \cdot A \text{ for all satellites}] = Y$

Total percentage compensation for each satellite = $X \cdot D + Y \cdot E$

Satellite Operator Pool Allocations

Satellite Operators	Percentage
ABS	8.1%
Empressa Argentina	1.9%
Eutelsat	12.6%
Hispasat	4.1%
Intelsat	44.1%
SES	23.0%
Star One (Claro)	1.7%
Telesat Canada	4.4%
TOTAL	100%