

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Applications of T-Mobile US, Inc. and Sprint Corporation	)	WT Docket No. 18-197
	)	
For Consent to Transfer Control of Licenses and Authorizations	)	
	)	
Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisition L.L.C., and Manifest Wireless L.L.C. for Extension of Time	)	ULS File Nos. 0008741236, 0008741420, 0008741603, and 0008741789 et. al.

**PROTEST OF ORDER OF PROPOSED MODIFICATION**

Pursuant to Section 316(a) of the Communications Act of 1934, as amended (the “Act”)<sup>1</sup> and Section 1.87 of the Federal Communications Commission’s (“FCC” or “Commission”) rules<sup>2</sup>, the Rural Wireless Association, Inc. (“RWA”)<sup>3</sup> files this Protest of the *Order of Proposed Modification* released November 5, 2019.<sup>4</sup>

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<sup>1</sup> 47 U.S.C. § 316(a).

<sup>2</sup> 47 C.F.R. § 1.87.

<sup>3</sup> RWA is a 501(c)(6) trade association dedicated to promoting wireless opportunities for rural telecommunications companies who serve rural consumers and those consumers traveling to rural America. RWA’s members are small businesses serving or seeking to serve secondary, tertiary, and rural markets. Each of RWA’s member companies serves fewer than 100,000 subscribers.

<sup>4</sup> *In the Matters of Applications of T-Mobile US, Inc., and Sprint Corporation for Consent to Transfer Control of Licenses and Authorizations, et. al.*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, WT Docket No. 18-197, FCC 19-103 (released November 5, 2019) (“*Order of Proposed Modification*”)

**I. THE RURAL WIRELESS ASSOCIATION HAS STANDING TO FILE A PROTEST.**

Section 316(a) of the Act requires the Commission to provide at least a 30 day protest period before any order of proposed modification becomes final.<sup>5</sup> Additionally, Sections 316(a)(2) of the Act, and Section 1.87(c) of the Commission’s rules stipulate that if another licensee or permittee believes that its license or permit would be modified by this proposed modification order, that entity may file its own protest subject to the requirements of Section 309 of the Act.<sup>6</sup> Although RWA does not contend that the licenses and permits held by its member companies will be formally modified by the proposed modification order, these licenses will be substantially and adversely affected by the proposed Commission action. Dish Communications Corp.’s (“Dish”) request for relief, which initiated this proceeding, asked for an extension of its build-out deadlines.<sup>7</sup> While the Commission technically will modify the Dish licenses by extending the build-out deadlines, it cannot do so without waiving its build-out rules, and it cannot waive those rules without allowing for public comment. By acting like the extension of the build-out deadline is only a “modification” of the license, the FCC is preventing the public (whether a licensee or not) from being able to protest the waiver of the rules governing the build-out deadlines. By converting this proceeding to a Modification proceeding, the Commission

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<sup>5</sup> 47 U.S.C. § 316(a)(1).

<sup>6</sup> 47 U.S.C. §§ 316(a)(2)-(3).

<sup>7</sup> Letter from Donald K. Stockdale, Jr., Chief – Wireless Telecommunications Bureau, FCC to Jeffrey H. Blum, Senior V.P. & Deputy General Counsel, Dish Corp., (July 9, 2018) (“*FCC Letter to Dish*”) at p. 2. Dish missed its interim construction deadline for its AWS-4 licenses, and by rule, its final construction deadline was accelerated by one year to March 7, 2020. Additionally, Dish missed its interim construction deadline for its 700 MHz Lower E Block licenses, and by rule, its final construction deadline was accelerated by one year to March 7, 2020. Finally, Dish missed its interim construction deadline for its AWS H Block licenses, and by rule, its final construction deadline was accelerated by two years to April 29, 2022.

effectively prevents public comment because an order proposing to extend the construction deadlines for a single licensee cannot on its face possibly “modify” another entity’s license or permit. If the Commission chooses to accordingly deny standing to all parties rather than properly apply a broader party-in-interest standard applicable to all Commission proceedings that potentially impact Commission licensees and the public, it has abused its procedural authority under the Administrative Procedure Act by employing a nonsensical Protest process that would preclude participation by anyone.

The licenses subject to the *Order of Proposed Modification* are Lower 700 MHz E Block, AWS-4, and AWS H Block licenses held by Dish or one of its subsidiaries.<sup>8</sup> RWA’s carrier members are licensees in the same AWS and Lower 700 MHz Bands. RWA has been a participant in the rulemaking proceedings that led to the licensing of all three license bands and RWA’s many of RWA’s carrier members participated in the auction to win these licenses to serve rural areas. In 2012, RWA submitted reply comments in the AWS-4 rulemaking proceeding.<sup>9</sup> It first urged the Commission to adopt a proposal first introduced by NTCA – The Rural Broadband Association whereby Dish could “meet its deployment benchmarks by meaningfully partnering with rural wireless carriers.”<sup>10</sup> Alternatively, RWA asked the Commission to require Dish to “sell or lease its spectrum in rural areas if [Dish] is unable to

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<sup>8</sup> *Order of Proposed Modification* at ¶ 395.

<sup>9</sup> *In the Matters of Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, et. al.*, Reply Comments of the Rural Telecommunications Group, Inc., WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142 (filed May 31, 2012) (“*RWA AWS-4 Reply Comments*”).

<sup>10</sup> *RWA AWS-4 Reply Comments* at p. 3.

build it out within three to five years.”<sup>11</sup> Similarly, in 2013, RWA took part in the AWS H Block auction proceeding which resulted in an auction in which Dish was the eventual highest bidder. RWA raised its concerns with the Commission that auctioning license blocks in the AWS H Block that are the size of Economic Areas (“EAs”) was “harmful to consumers in rural and remote areas because the rural carriers that serve these rural consumers will be handicapped in their ability to acquire the spectrum at auction and economically deploy a network to serve an entire EA.”<sup>12</sup> RWA has continually argued that package bidding and large license blocks only benefit larger carriers or licensees, and that winning bidders for such license areas are “more likely to serve greater populated urban areas and ignore the needs of lesser populated rural areas”<sup>13</sup> or leave the spectrum fallow, just as Dish has done. Indeed, RWA predicted that the “H Block auction winner [would] hold the rural areas hostage by warehousing spectrum in rural markets.”<sup>14</sup> Finally, RWA was actively involved in the rulemaking proceeding leading up to the auction of 700 MHz spectrum (Auction 73), and many of RWA’s members are not just licensees, but actual commercial mobile wireless service providers in this very same band, unlike Dish. In short, RWA is a “party in interest” in the present proceeding and therefore has standing to file

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<sup>11</sup> *RWA AWS-4 Reply Comments* at pp. 3-4.

<sup>12</sup> *In the Matter of Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands*, Comments of the Rural Telecommunications Group, Inc., AU Docket No. 13-178 (filed August 5, 2013) (“*RWA AWS H Block Comments*”) at p. 2.

<sup>13</sup> *In the Matter of Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands*, Reply Comments of the Rural Telecommunications Group, Inc., AU Docket No. 13-178 (filed August 16, 2013) (“*RWA AWS H Block Reply Comments*”) at p. 3.

<sup>14</sup> *RWA AWS H Block Comments* at p. 6.

this protest of the *Order of Proposed Modification*.<sup>15</sup> Furthermore, RWA’s members will be directly harmed if the proposed build-out extensions, commitments, and proposed modifications are allowed to proceed.

## II. THE COMMISSION’S *ORDER OF PROPOSED MODIFICATION* IS NOT IN THE PUBLIC INTEREST

A 700 MHz Lower E Block, AWS-4, or AWS H Block license may not be modified unless such action “promote[s] the public interest, convenience, and necessity.”<sup>16</sup> The Commission claims that an unprecedented grant of license modifications will serve the public interest due to Dish’s “willingness to accept a number of conditions that would generally require it to construct a nationwide 5G broadband network.”<sup>17</sup> However, these requests for license modifications are to be extended to a company that has already failed to deliver on previous interim construction build-out deadlines! Dish does not dispute that it “failed to meet interim construction deadlines” for its Lower 700 MHz E Block, AWS-4 and AWS H Block licenses.<sup>18</sup> The real question here is why does the Commission find it in the public interest to repeatedly reward a company that has failed to make good on prior commitments and promises?

### A. Dish’s Commitments to the FCC and DOJ, Even if They are Met, Do Not Serve the Public Interest.

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<sup>15</sup> See, e.g., *In the Matter of BIT/State Radio Communications Engineering’s Requests for Extension/Waiver of Time to Construct*, Order of Proposed Modification, File Nos. 0003081467, et. al., DA 19-41 (released February 4, 2019) at ¶ 23; *In the Matter of PTC-220, LLC Request for Modification of Station KIVD0007 and Waivers to Implement Positive Train Control*, Proposed Order of Modification, File No. 0007202625, DA 16-1406 (released December 19, 2016) at ¶ 33.

<sup>16</sup> 47 U.S.C. § 316(a)(1).

<sup>17</sup> *Order of Proposed Modification* at ¶ 364.

<sup>18</sup> *FCC Letter to Dish* at p. 1.

On July 26, 2019, Dish filed a letter with the FCC’s Wireless Telecommunications Bureau (“WTB”) pledging to “deploy a first-of-its-kind 5G network built from the ground up” and with “concrete” deployment milestones, but only if the Commission grants a litany of requested extensions contained in an accompanying attachment.<sup>19</sup> Specifically, Attachment A to the *Dish Letter* commits Dish to deploying 5G to at least 70% of the U.S. population (with 35 Mbps download speeds) by June 2023.<sup>20</sup> However, this provides no benefit to the public. Had the Commission simply enforced Dish’s interim build-out requirements for the AWS licenses, Dish would have *already* provided some type of wireless broadband service to at least 40% of the U.S. population by no later than May 2018. Additionally, Dish was already expected to serve 70% of the U.S. population by March of 2020.

What Dish is promising to deliver as a “public interest” at some date three years in the future - - and this is assuming Dish actually deploys facilities - - is literally nothing more than what AT&T, Sprint, T-Mobile and Verizon already deliver today. All four of the country’s nationwide carriers provide services using networks that cover well above 90% of the country’s population. As of Q2 2019, AT&T, Sprint, T-Mobile, and Verizon, based on nationwide crowd-sourced drive-testing data are all providing, on average, between 28.15 Mbps and 32.91 Mbps download speeds using 3G and 4G/LTE technologies.<sup>21</sup> In fact, millions of mobile wireless customers today at each of the four nationwide carriers using devices such as the Samsung Galaxy S10 and Apple iPhone are already enjoying download speeds well above 35 Mbps!<sup>22</sup>

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<sup>19</sup> Letter from Jeffrey H. Blum, Senior V.P., Dish Corp. to Donald K. Stockdale, Jr., Chief – Wireless Telecommunications Bureau, FCC (July 26, 2019) (“*Dish Letter*”) at p. 2.

<sup>20</sup> Dish also commits to deploying 15,000 5G cell sites by this date.

<sup>21</sup> See <https://www.speedtest.net/reports/united-states/> (last visited December 5, 2019).

<sup>22</sup> *Id.*

What the Commission is willing to accept as pro-consumer is Dish spending over three years<sup>23</sup> promising to deploy its own core and wireless radio access network (“RAN”) - - but the trade-off is that the Commission is allowing Sprint to completely disappear as a facilities-based operator selling its own retail offerings and providing wholesale and roaming access to numerous MVNOs and rural roaming partners. Overall, there is no benefit to the public.

B. Rural Consumers are Harmed When the Commission Allows Licensees to Warehouse Spectrum; Thus Preventing Rural Carriers from Utilizing Scarce Spectrum in a Timely Fashion.

Dish spent the early part of the decade convincing the Commission to take certain actions that ultimately harmed rural America and delayed the deployment of mobile wireless broadband to those very individuals that need it most: the unserved and underserved residents in rural markets. First, Dish pushed the FCC to structure the AWS-4 Band service rules in a self-serving manner,<sup>24</sup> so that after doing so, Dish would be better positioned to be the high (and sole successful) bidder in Auction 96 and lay claim to the neighboring AWS H Block.<sup>25</sup> Similarly, the Commission granted Dish an extension of its Lower 700 MHz build-out deadlines in exchange for making certain interoperability and operational performance concessions in the 700

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<sup>23</sup> It is important to note that while Dish commits to deploying its “Nationwide 5G” network by June 14, 2023, its subsequent commitment to verify deployment with drive-tests (by Dish personnel) has no fixed deadline, and in fact may be conducted up to six months after June 14, 2023, and potentially even longer after that if Dish and the WTB cannot agree on “an industry-standard methodology.” *Dish Letter*, Attachment A at FN 1.

<sup>24</sup> *In the Matter of Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, et. al.*, Order of Modification, WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142, DA 13-231 (released February 15, 2013) (“*AWS-4 Order of Modification*”).

<sup>25</sup> *In the Matter of Service Rules for Advanced Wireless Services H Block, et. al.*, Report and Order, WT Docket No. 12-357, FCC 13-88 (released June 27, 2013) (“*AWS H Block Order*”).

MHz Lower E Block.<sup>26</sup> Dish was quite successful in getting large license block sizes for the AWS H Block in Auction 96, less potential for interference and spectral efficiency with the AWS-4 Band it already held, and then finally build-out extensions for the Lower 700 MHz E Block. In a few short years, Dish helped to prevent rural carriers from bidding on mid-band spectrum by advocating for EA-size license blocks in Auction 96 and delayed build-out of low-band spectrum by getting a build-out extension of its Lower 700 MHz E Block licenses. What has it done since then? Missed all of its interim construction deadlines and warehouse valuable spectrum that even the Commission believes is “apparently lying fallow.”<sup>27</sup>

RWA is not alone in calling-out Dish as a perpetual “warehouser” of FCC spectrum. In an October 25, 2018 letter to the Commission’s WTB, T-Mobile concluded that the “public interest requires” that the Dish AWS-4, Lower 700 MHz E Block, and AWS H Block spectrum be “recaptured” by the Commission and “put to use by others if DISH is unwilling to deploy a network.”<sup>28</sup> Had the Commission used Cellular Market Areas (“CMAs”) instead of EAs in Auction 96, and based on the bidding successes of small and rural carriers in other FCC auctions using CMAs, it is safe to assume that many rural markets today would be enjoying LTE coverage utilizing the AWS H Block spectrum while Dish’s urban and suburban markets would still remain fallow. Spectrum warehousing disproportionately impacts rural carriers and harms rural consumers because when “nationwide” licensees sit on spectrum and fail to deploy

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<sup>26</sup> *In the Matter of Promoting Interoperability in the 700 MHz Commercial Spectrum, et. al.*, Report and Order and Order of Proposed Modification, WT Docket Nos. 12-69, 12-332, FCC 13-136 (released October 29, 2013) (“*700 MHz Interoperability Order*”).

<sup>27</sup> *July 9 2018 FCC Letter to Dish* at p. 2.

<sup>28</sup> Letter from Kathleen O’Brien Ham, Senior V.P., T-Mobile US, Inc., to Donald Stockdale, Jr., Chief - Wireless Telecommunications Bureau, FCC at p. 1 (October 25, 2018) (“*T-Mobile Letter to FCC*”).

commercial services, it is usually done at the national level, such as with the AWS H Block. Unfortunately, because the Commission awarded Dish AWS H Block spectrum as the sole winning bidder in Auction 96, and Dish failed to meet its subsequent interim build-out deadlines, the entire country is harmed. Dish should not be rewarded for this.

Nearly six years after Dish acquired this vast hoard of spectrum, the entirety of those three bands and/or license blocks remain fallow and a commercial wasteland. Yet somehow, Dish believes it should be rewarded for these market failures by promising to deliver by 2023 wireless services capable of delivering 35 Mbps that are already available today and offered by no less than four facilities-based, nationwide wireless carriers. There is no public interest benefit in having Sprint disappear entirely from the competitive landscape - - only to be replaced by Dish committing to deliver services in the name of the public interest that are already present today. For these reasons, RWA protests the *Order or Proposed Modification* and urges the Commission to remove the stay currently in place and compel Dish to deploy services under the current construction deadlines, or return the licenses to the FCC so that rural carriers can actually utilize them and deploy real-life wireless services.

Respectfully submitted,

**RURAL WIRELESS ASSOCIATION, INC.**

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