

May 25, 2016

VIA ELECTRONIC DELIVERY

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

**Re: Notice of Ex Parte Presentation
GN Docket No. 14-177; IB Docket No. 15-256; RM-11664; WT Docket No. 10-112;
IB Docket No. 97-95**

Dear Ms. Dortch:

On May 23, 2016, representatives of Nextlink Wireless, LLC, an operating affiliate of XO Communications, LLC (“Nextlink”) met with representatives from the International Bureau (“IB”), Office of Engineering and Technology (“OET”) and Wireless Telecommunications Bureau (“WTB”) of the Federal Communications Commission (“FCC” or “Commission”) to discuss the Commission’s *Notice of Proposed Rulemaking* in the above-referenced proceedings.¹ Attending the meeting on behalf of Nextlink/XO were: Lisa Youngers, Vice President and Assistant General Counsel – Federal Affairs; Patrick Thompson, Director, Legislative Affairs; Eric Miller, Senior Wireless Strategist; Michele Farquhar and Tom Peters of Hogan Lovells US LLP, counsel and advisor to Nextlink/XO, respectively; and Mike Lasky of Wideline, Inc., consultant to Nextlink/XO. Attending the meeting on behalf of the Commission were the following IB, OET and WTB staff: Bahman Badipour, Simon Banyai, Stephen Buenzow (by phone), Martin Doczkat, Tim Hilfiger (by phone), Nicholas Oros (by phone), Barbara Pavon (by phone), Matthew Pearl, Brian Regan, John Schauble, Catherine Schroeder (by phone), Blaise Scinto and Nancy Zaczek (by phone).

At the meeting, Nextlink discussed the benefits of maintaining the 28 GHz and 39 GHz bands’ current geographic licensing schemes in contrast to the financial and technical burdens of issuing new Upper Microwave Flexible Use (“UMFU”) licenses on a county-by-county basis. A large majority of commenters opposed the Commission’s county-based licensing scheme for 28 GHz and 39 GHz UMFU licenses.² Nextlink explained that it does not support county-based licensing

¹ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et al.*, Notice of Proposed Rulemaking, 30 FCC Rcd 11878 (2015) (“*NPRM*”).

² See, e.g., Reply Comments of Intel Corp., GN Docket No. 14-177, *et al.* at 2 (filed Feb. 26, 2016) (“While many of the Commission’s primary proposals were supported by a majority of commenters, a small minority of those proposals received substantial opposition. These include . . . the proposal for county-based license areas”); Reply Comments of Nokia, GN Docket No. 14-177, *et al.* at 3 (filed Feb. 26, 2016) (“Commenters widely agree that the geographic licensing area should be larger

because adopting extremely small geographic license areas would increase administrative costs and operational burdens.³ County-based licensing would increase the amount of interference coordination and lease negotiations that operators will need to engage in as they deploy services over the newly licensed spectrum and add substantially to the cost of building out these licenses.⁴ County-based licensing would not only increase license holders' operational burdens, but also the FCC's administrative costs. The Commission would take on the responsibility of overseeing almost 9,000 separate authorizations if it licenses the 28 GHz band based on counties and the 39 GHz band based on Partial Economic Areas ("PEAs").⁵ Nextlink therefore urged the Commission to maintain existing Basic Trading Areas ("BTAs") for 28 GHz licenses and Basic Economic Areas ("EAs") for 39 GHz licenses. In the event the FCC does reconfigure the geographic license areas for existing licensees, however, Nextlink concurred with staff that—at a minimum—the FCC should extend existing licensees' renewal dates, with licensees demonstrating substantial service as of the date of the extended license renewal term. The FCC should specifically include this extension in writing if it adopts new geographic license areas.

Nextlink also urged the FCC to reject the recent proposals to afford fixed satellite service ("FSS") operations co-primary status in the vast majority of the geographic territory of the United States.⁶ The Commission's rules long ago established that FSS is secondary to Local Multipoint

than county-level."); Reply Comments of Samsung Electronics America, Inc. and Samsung Research America, GN Docket No. 14-177, *et al.* at 10 (filed Feb. 26, 2016) ("The majority of commenters opposed the Commission's proposed county-based licensing scheme for the 28 GHz, 37 GHz, and 39 GHz bands."); Reply Comments of Straight Path Communications Inc., GN Docket No. 14-177, *et al.* at 6 (filed Feb. 26, 2016) ("Commenters in this proceeding almost unanimously oppose the Commission's proposed county-based licensing scheme for 28 GHz and 39 GHz bands."); Reply Comments of T-Mobile USA, Inc., GN Docket No. 14-177, *et al.* at 15 (filed Feb. 26, 2016) ("T-Mobile agrees with Verizon that county-level licenses could prove administratively complex and burdensome.").

³ See Reply Comments of XO Communications, LLC, GN Docket No. 14-177, *et al.* at 8-9 (filed Feb. 26, 2016); see also Reply Comments of The Wireless Internet Service Providers Association, GN Docket No. 14-177, *et al.* at 3-4 (filed Feb. 26, 2016) ("[I]f an LMDS license were subdivided into eight separate county-wide licenses, the licensee would need to meet regulatory obligations, file renewal applications and pay regulatory fees for each of the eight licenses.").

⁴ *Id.*

⁵ See *NPRM*, 30 FCC Rcd at 11914 ¶¶ 116-17. Using the existing band plans for 28 GHz and 39 GHz spectrum, the county-based license areas would result in 3,141 28 GHz band licenses and the PEA-based license areas would result in 5,824 39 GHz licenses.

⁶ See *Ex Parte* Letter from Stacey G. Black, Assistant Vice President – Federal Regulatory, AT&T Services, Inc. and Jennifer A. Manner, Vice President, Regulatory Affairs, EchoStar Corp. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, *et al.* (filed Apr. 6, 2016). Under the EchoStar/AT&T proposal, UMFU licensees would receive guaranteed interference protection in very limited pockets of the country, while FSS stations would become elevated to co-primary status in the remainder of the country—the vast majority of the U.S. geography. In addition, individually licensed FSS earth stations already in existence or applied for by the time of the UMFU auction within the "urban cores" would be co-primary with UMFU licensees, and UMFU licensees would be required to accept interference from these stations. See also *Ex Parte* Letter from John P. Janka and Elizabeth R. Park, Counsel to ViaSat, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, *et al.* (filed Apr. 21, 2016).

Distribution Service (“LMDS”) operations in the 28 GHz Band.⁷ As the attached presentation slides show, the AT&T-EchoStar “urban core” proposal omits massive areas of high population density where 5G services will be prevalently deployed and would therefore significantly deter deployment of 5G services.⁸ Nextlink discussed alternatives to the AT&T-EchoStar proposal⁹ and, without endorsing any specific proposal, noted that these alternatives are preferable ways of achieving a mutually agreeable and equitable solution for increasing FSS access to the 28 GHz and 39 GHz bands than the AT&T-EchoStar proposal.¹⁰ Moreover, Nextlink added that existing tools, such as partitioning and disaggregating licenses and coordination, provide a readily available solution for protecting FSS operations, and Nextlink has reached equitable agreements with many satellite operators through these means.

Nextlink also expressed its support for including the A2 and A3 Bands and the B Block of the 28 GHz band in a flexible use plan for 5G.¹¹ The record shows that 5G can be deployed over bandwidths smaller than the artificial 500 megahertz threshold the FCC has proposed for identifying new millimeter-wave bands for flexible use.¹² Nextlink noted that in many markets Nextlink is the licensee for both the A3 and B Block spectrum and could aggregate 300 megahertz of spectrum at 31.0-31.3 GHz. Nextlink asked the FCC to, at a minimum, issue a Further Notice of Proposed Rulemaking that proposes allocating the A2 and A3 Bands and the B Block for flexible use.

⁷ As the Commission noted in the NPRM, “[t]he investments satellite operators have made in the Ka-band operations were made with knowledge of their secondary status . . . it is unreasonable for us to preclude mobile use of this band solely because of pre-existing secondary use.” See *NPRM*, 30 FCC Rcd at 11892 ¶ 31.

⁸ The attached slides provide an analysis of the practical application of the AT&T-EchoStar proposal in several of the most populated BTAs in the country. In the Atlanta, GA BTA, for example, the AT&T-EchoStar proposal would reclassify 99.29 percent of the geographic landmass and 93.8 percent of the population as co-primary between FSS and UMFU licensees. See attach. at 11. In the combined Dallas and Fort Worth, TX BTAs, the proposal would reclassify 98.38 percent of the landmass and 84.3 percent of the population as co-primary. *Id.* at 7.

⁹ See T-Mobile US, Inc., Millimeter Wave Spectrum – Advancing 5G Leadership 4 (May 5, 2016), attached to *Ex Parte* Letter from Steve B. Sharkey, Vice President, Government Affairs Technology and Engineering Policy, T-Mobile US, Inc. to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177 (filed May 9, 2016); *Ex Parte* Letter from Scott K. Bergmann, Vice President, Regulatory Affairs, CTIA – The Wireless Association® to Marlene H. Dortch, Secretary, FCC, GN Docket No. 14-177, *et al.* (filed May 20, 2016).

¹⁰ Nextlink did opine that T-Mobile’s proposal to exclude future FSS operations in the 200 most populated PEAs may be overly restrictive. Nextlink provided a map of the 200 largest PEAs in its presentation. See attach. at 17.

¹¹ See Comments of XO Communications, LLC, GN Docket No. 14-177, *et al.* at 11-16 (filed Jan. 28, 2016); Reply Comments of XO Communications, LLC, GN Docket No. 14-177, *et al.* at 4-6 (filed Feb. 26, 2016).

¹² See, e.g., Comments of Ericsson Inc., GN Docket No. 14-177, RM-11664 at 37 (filed Jan. 15, 2015).

Finally, Nextlink reiterated its support for assigning flexible use rights to UMFU licenses and allowing for partitioning, disaggregation and leasing of UMFU licenses.¹³ Flexible use rights are the most straightforward way to ensure that 28 GHz and 39 GHz spectrum is used for millimeter-wave, mobile 5G services. And whatever benefits the Commission believes can be gained from smaller geographic license sizes can more appropriately be achieved through flexible use and license disaggregation rules.

Pursuant to Section 1.1206(b) of the Commission's rules, I am filing this letter electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

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¹³ See Comments of XO Communications, LLC, GN Docket No. 14-177, *et al.* at 8-11, 23 (filed Jan. 28, 2016); Reply Comments of XO Communications, LLC, GN Docket No. 14-177, *et al.* at 6-8, 13-14 (filed Feb. 26, 2016).