



May 27, 2016

VIA ELECTRONIC FILING

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

Re: **Ex Parte Presentation**, *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, GN Docket No. 14-177; *Establishing a More Flexible Framework to Facilitate Satellite Operations in the 27.5-28.35 GHz and 37.5-40 GHz Bands*, IB Docket No. 15-256; *Petition for Rulemaking of the Fixed Wireless Communications Coalition to Create Service Rules for the 42-43.5 GHz Band*, RM-11664; *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95, and 101 To Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112; *Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands*; *Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band*; *Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services*; and *Allocation of Spectrum in the 37.0- 38.0 GHz and 40.0-40.5 GHz for Government Operations*, IB Docket No. 97-95

Dear Ms. Dortch,

CTIA and its members strongly support the Commission's ongoing efforts to promote the next generation of wireless services by adopting licensing and service rules for millimeter wave spectrum bands in the above-captioned proceedings. This spectrum holds great potential to host high-speed, low-latency wireless services that will enable the Internet of Things and numerous other applications. As CTIA and others have observed, however, the millimeter wave frequency environment will be a highly complex one, with numerous primary incumbents that will require protection. CTIA believes in the importance of primary incumbent rights, but takes this opportunity to reiterate that the Commission should not elevate the interference protection rights of any non-primary incumbent outside of a market-based mechanism. In particular, the Commission's proposal to require 28 GHz satellite licensees to obtain primary rights via an auction or the secondary market is practical, reasonable, and entirely consistent with applicable laws.

CTIA believes that requiring 28 GHz satellite licensees to participate in an auction or the secondary market is an equitable way of addressing satellite licensees' interference concerns. There is no reason why a Fixed-Satellite Service ("FSS") licensee, if it follows the same processes as a wireless licensee to obtain spectrum access, should not be permitted to purchase a license that would have the effect of giving the satellite incumbent primary rights with respect to its Part



25 earth station license. By holding a terrestrial license in the same geographic area where it operates its 28 GHz earth stations, a FSS licensee would be able to self-coordinate and ensure that it will not receive harmful interference.

Contrary to the assertions of others in this proceeding, the Commission's proposal to permit incumbent FSS licensees to protect their operations through market-based mechanisms is entirely consistent with applicable law. In comments filed in this proceeding, EchoStar has argued that this mechanism "unnecessarily implicates the ORBIT Act" and requires the Commission to "contort its rules in order to maintain [a] legal fiction."¹ However, as EchoStar concedes, the ORBIT Act merely prohibits the Commission from assigning *satellite* licenses using competitive bidding.² The ORBIT Act does not disqualify satellite licensees from acquiring *terrestrial* licenses via auction, or from participating in competitive bidding as a general matter. The Commission affirmed this fact in the *Spectrum Frontiers NPRM*, noting that "an FSS provider taking advantage of this flexibility would be acquiring a terrestrial license, for terrestrial operations, that also has the effect of protecting a gateway in the service area by virtue of the right to exclude conferred through the license."³

EchoStar also erroneously asserts that the Commission's proposed approach raises compliance questions that will cause confusion for affected licensees, thus creating a "legal fiction."⁴ EchoStar has asked a series of questions which generally point to a common, broader inquiry: whether FSS licensees who obtain terrestrial licenses at auction would be bound by the same licensing and service rules as other terrestrial licensees in the same spectrum.⁵ CTIA submits that the *NPRM* is clear on this issue: FSS earth stations will continue to be subject to Part 25, while all Upper Microwave Flexible Use licensees will be subject to their own set of applicable rules.⁶ Unless the Commission provides otherwise,⁷ FSS and terrestrial licenses operated by the

¹ Comments of EchoStar Satellite Operating Corporation, Hughes Network Systems, LLC, and Alta Wireless, Inc., GN Docket No. 14-177, IB Docket Nos. 15-256 and 97-75, WT Docket No. 10-112, RM-11662, at ii-iii (filed Jan. 27, 2016).

² *Id.* at 35 (citing 47 U.S.C. § 765(f)).

³ *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, Notice of Proposed Rulemaking*, 30 FCC Rcd 11878, ¶ 134 (2015) ("*NPRM*").

⁴ EchoStar Comments at 36-37.

⁵ *Id.* at 36.

⁶ *NPRM* ¶ 134 ("We emphasize, however, that an Upper Microwave Flexible Use license would not authorize operations of the FSS earth stations. *The licensing of earth stations would continue to be governed by our Part 25 licensing rules.* . . . As is clear from our description, an FSS provider taking advantage of this flexibility *would be acquiring a terrestrial license, for terrestrial operations*, that also has the effect of protecting a gateway in the service area by virtue of the right to exclude conferred through the license.") (emphasis added).

⁷ For example, the Commission has asked whether it would be appropriate to adopt alternative performance requirements in cases where Upper Microwave Flexible Use operations would be sharing spectrum with satellite operations. *NPRM* ¶ 224. While this could provide some



same licensee in the same geographic area will need to individually comply with the provisions of their respective governing rule parts. To the extent parties find compliance with two sets of rules to be overly burdensome, they are under no obligation to obtain a second, terrestrial authorization. However, any FSS incumbent who elects not to protect its operations will be operating on a secondary basis and will be required to accept interference from primary Upper Microwave Flexible Use licensees.

To the extent that EchoStar and others believe that compliance with a terrestrial services-based performance requirement would be untenable for a FSS licensee that acquires a terrestrial license in the same service area, CTIA notes that the adoption of substantial service performance requirements could ease this burden.⁸ By adopting a substantial service standard, the FCC would give licensees considerable flexibility in demonstrating that they have complied with Commission performance requirements. Further, a substantial service standard is appropriate in light of the diversity of services being offered in millimeter wave bands, the nascent nature of millimeter wave technologies, and the likely differences in deployment patterns in rural and urban areas. In addition, CTIA expects that FSS licenses that obtain Upper Microwave Flexible Use licensees may make the spectrum available to other users under the FCC's secondary market rules.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Brian M. Josef

Brian M. Josef
Assistant Vice President, Regulatory Affairs
CTIA

relief to FSS licensees for whom FSS is their primary business, the Commission is under no legal obligation to do so.

⁸ See CTIA Ex Parte Presentation, Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, GN Docket No. 14-177, *et al.* (filed May 24, 2016).