

May 31, 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 26, 2016, the representatives of Nextlink Wireless, LLC (“Nextlink”), an operating affiliate of XO Communications, LLC (“XO”), met with: (1) Edward “Smitty” Smith, Legal Advisor to Chairman Wheeler; (2) Daudeline Meme, Legal Advisor to Commissioner Clyburn; (3) Johanna Thomas, Legal Advisor to Commissioner Rosenworcel; (4) Brendan Carr, Legal Advisor to Commissioner Pai; and (5) Erin McGrath, Legal Advisor to Commissioner O’Rielly, to discuss the Federal Communications Commission’s (“FCC’s” or “Commission’s”) *Notice of Proposed Rulemaking* in the above-referenced proceedings.¹ Attending the meetings 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 (attending only the meetings with Meme, Thomas and Carr); Michele Farquhar and Tom Peters of Hogan Lovells US LLP, counsel and advisor to Nextlink/XO, respectively; and Mike Lasky of Widely, Inc., consultant to Nextlink/XO (attending only the meetings with Smith, Carr and McGrath).

At the meetings, Nextlink discussed the benefits of maintaining the 28 GHz band’s 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 novel, never-before-tested county-based proposed licensing scheme for 28 GHz licenses.² Nextlink explained that it does not support county-based

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

²See, 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

licensing because adopting extremely small geographic license areas would present several financial and technical challenges.³ As an initial matter, Nextlink currently holds 93 Local Multipoint Distribution Service (“LMDS”) licenses, but under the new proposal would hold 767 county-based licenses for the A1 band alone.⁴ Nextlink explained how the population densities of counties within the same Basic Trading Area (“BTA”) can vary widely and how this, along with jurisdictional issues in some BTAs, will complicate a county-based licensing scheme. As the attached presentation slides show, Inyo County, California has a population density of 1.8 people per square mile and is contained within the same BTA as Los Angeles County, one of the most densely populated counties in the country.⁵ A similar problem occurs in the Denver, Colorado BTA, where several counties have a population density of two people per square mile or less.⁶ The New York BTA, meanwhile, is comprised of numerous counties spread across several states.⁷ Each of these BTAs spread across different geographic parts of the country would present their own unique problems if the FCC adopted county-based licenses for the 28 GHz band.

Nextlink chronicled the specific financial challenges that county-based licensing would create for an operator in its position to meet existing substantial service requirements for each individual county. Nextlink would incur significant upfront costs for each new site Nextlink deployed within a county. These costs include the purchase of radios, backhaul, telemetry routers, as well as real estate, permitting and construction expenses – potentially totaling in the tens of millions of dollars. Beyond these initial deployment costs, Nextlink would also need to pay substantial recurring operational expenses such as monthly site maintenance and connectivity, warehousing costs for spare equipment, site audit costs and location rents. In addition, Nextlink would incur sizable administrative costs such as annual licensing and other regulatory fees payable on a license-by-license basis and legal fees for re-filing modified leases on a county basis.

In addition to the financial hurdles, Nextlink noted that segregating out the A1 band for county-based licensing would also make it harder for Nextlink to obtain equipment that can operate using this spectrum, particularly if the Commission does not include the A2 and A3 bands and the B

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 [Nextlink], 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 Of course, if the Commission includes the A2 and A3 bands and the B block in its flexible use band plan for 28 GHz, the number of Nextlink’s county-based licenses would increase substantially.

⁵ See attach. at 2.

⁶ See *id.* at 3.

⁷ *Id.* at 4.

block as part of the new 28 GHz 5G flexible use band plan. The Commission previously acknowledged LMDS licensees' difficulties in getting access to equipment when it granted multiple LMDS licensees' applications for waivers and extensions of time to demonstrate substantial service in 2008.⁸ Not reallocating the A2 and A3 bands and the B block for flexible use and including it in a 5G band plan would trigger the same—if not worse—equipment challenges LMDS licensees faced in the past and impose extreme burdens on licensees without any corresponding benefits. It is far more efficient to discuss with equipment manufacturers new 5G standards and use cases relative to the A1 band at the same time as discussing equipment requirements for the A2 and A3 bands and the B block.

Furthermore, moving to a county-based licensing scheme would disadvantage the 28 GHz band relative to the 39 GHz band as those licensees would benefit from re-licensing of their band based on Partial Economic Areas ("PEAs"), which are significantly larger than counties. The county-based licensing approach for LMDS increases costs for both the Commission and operators that would be different than in the 39 GHz band.

Nextlink noted that in past spectrum proceedings the FCC has provided incumbent licensees with greater flexibility (including mobility) without adopting smaller geographic licensing areas or more stringent build-out requirements.⁹ In other cases where the FCC reallocated spectrum for mobile or flexible use, the Commission reduced the level of construction required in the markets or granted licensees more time to meet existing build-out requirements.¹⁰

Finally, 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 PEAs.¹¹ Nextlink therefore urged the Commission to maintain existing BTAs for 28 GHz licenses and Basic Economic Areas for 39 GHz licenses, or to consider an alternative licensing scheme that involves geographic areas larger than individual counties.

⁸ See *Applications filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.101 of the Commission's Rules and Extensions of Time to Construct and Demonstrate Substantial Service*, Memorandum Opinion and Order, 23 FCC Rcd 5894, 5905 ¶ 24 (WTB Apr. 11, 2008) ("We find that the LMDS licensees before us have demonstrated that they faced factors beyond their control, including difficulties in obtaining viable, affordable equipment, that warrant granting a limited extension of time to permit these licensees to continue to build out their licenses.").

⁹ See, e.g., *Amendments to Parts 1, 2, 27 and 90 of the Commission's Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, Report and Order, 17 FCC Rcd 9980, 10010 ¶¶ 72-73 (2002).

¹⁰ See, e.g., *Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band*, Report and Order and Second Report and Order, 25 FCC Rcd 11710 (2010), recon., *Order on Reconsideration*, 27 FCC Rcd 13651 (2012); *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102 (2012).

¹¹ 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.

Nextlink suggested that, to the extent the FCC's county-based licensing proposal is aimed at promoting greater access to the 28 GHz band for fixed satellite service ("FSS") operations, better alternatives are available to achieve this goal. Nextlink reiterated that tools such as partitioning and disaggregating licenses and coordination provide a readily available and effective solution for protecting FSS operations, and that Nextlink has coordinated with many satellite operators through these means. In that same vein, Nextlink urged the FCC to reject recent proposals to afford FSS operations co-primary status in the vast majority of the geographic territory of the United States.¹² The Commission's rules long ago established that FSS is secondary to LMDS operations in the 28 GHz band.¹³ The AT&T-EchoStar "urban core" proposal omits massive areas of high population density where 5G services will be prevalently used and would therefore significantly deter deployment of 5G services.¹⁴ Nextlink discussed alternatives to the AT&T-EchoStar proposal¹⁵ and, without endorsing any specific proposal, noted that these alternatives are preferable compared to the AT&T-EchoStar proposal.¹⁶

In the event the FCC does reconfigure the geographic license areas for existing licensees, however, Nextlink urged the Commission to grant incumbents relief to mitigate the substantial harms this decision would produce. For example, the FCC could extend existing licensees' renewal dates, with licensees demonstrating substantial service as of the date of the extended license renewal

¹² 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 AT&T-EchoStar 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).

¹³ 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.

¹⁴ The attached slides provide an analysis of the practical application of the AT&T-EchoStar proposal in two of the most populated BTAs in the country. In the Los Angeles, CA BTA, the AT&T-EchoStar proposal would reclassify 96.77 percent of the geographic landmass and 45.5 percent of the population as co-primary between FSS and UMFU licensees. See attach. at 5. In the Philadelphia, PA BTA, the proposal would reclassify 97.33 percent of the landmass and 75.7 percent of the population as co-primary. *Id.* at 6.

¹⁵ 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).

¹⁶ Nextlink did opine that T-Mobile's proposal to exclude future FSS operations in the 200 most populated PEAs may be overly restrictive.

term. Extending existing licensees' renewal dates and substantial service milestones would allow time for 5G standards and equipment to develop and for incumbents to prepare for the added costs and technical issues that county-based licensing will create. In any event, it would be premature for the Commission to maintain the same performance milestones because the market will need time to develop new equipment for mobile use of the band. The FCC could also move *up* the renewal date and allow incumbents to demonstrate substantial service based on existing BTA-based license areas. Or the FCC could consider some form of grandfathering based on existing licensees' current build-out.

Finally, Nextlink expressed its continued support for including the A2 and A3 bands and the B block of the 28 GHz band in a flexible use plan for 5G.¹⁷ 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.¹⁸ 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. It would be inefficient for manufacturers to build, and service providers to purchase and deploy, equipment that does not currently include these spectrum bands, only to turn around and remanufacture, repurchase and redeploy new equipment a year or two later after this spectrum is presumably allocated for flexible use. 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.

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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Enclosure

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¹⁷ See Comments of XO Communications, LLC [Nextlink], GN Docket No. 14-177, *et al.* at 11-16 (filed Jan. 28, 2016); Reply Comments of XO Communications, LLC [Nextlink], GN Docket No. 14-177, *et al.* at 4-6 (filed Feb. 26, 2016).

¹⁸ See, e.g., Comments of Ericsson Inc., GN Docket No. 14-177, RM-11664 at 37 (filed Jan. 15, 2015).