



June 3, 2016

BY ELECTRONIC FILING

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

Re: *Use of Spectrum Bands Above 24 GHz For Mobile Radio Services, et al.*, GN Docket No. 14-177, IB Docket Nos. 15-256 and 97-95; RM-11664; and WT Docket No. 10-112

Dear Ms. Dortch:

In comments and reply comments filed in this proceeding, EchoStar Satellite Operating Corporation, Hughes Network Systems, LLC and Alta Wireless, Inc. (collectively “EchoStar”) demonstrated that the Commission’s proposal to allow satellite operators to achieve co-primary status for their earth stations by purchasing new Upper Microwave Flexible Use (“UMFU”) licenses at auction leads to confusing and legally questionable results. Specifically, EchoStar pointed out that either: (1) such licenses would apply to satellite operations, and thus violate the Open-market Reorganization for the Betterment of International Telecommunications Act (the “ORBIT Act”); or (2) such licenses would require compliance with technical and build-out requirements for terrestrial operations even if the licensee only wanted to operate a satellite earth station.¹ The *Notice* does not clearly indicate which path the Commission intends to pursue.

In a recent *ex parte* filing, however, the wireless industry sees no ambiguity in how the Commission should proceed.

[Satellite] and terrestrial licenses operated by the 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 [satellite] incumbent who elects not to protect its operations will be operating on a secondary basis and will be required to accept interference from primary [UMFU] licensees.²

¹ See Comments of EchoStar Satellite Operating Corporation, Hughes Network Systems, LLC and Alta Wireless, Inc. at 34-37 (Jan. 27, 2016); Reply Comments of EchoStar Satellite Operating Corporation, Hughes Network Systems, LLC and Alta Wireless, Inc. at 12-14 (Feb. 26, 2016) (“EchoStar Reply Comments”).

² Letter from Brian M. Josef (CTIA) to Marlene H. Dortch, GN Docket No. 14-177, *et al.*, at 2-3 (May 27, 2016).

The wireless industry's proposed approach would discourage investment in broadband satellite services by imposing an arbitrary requirement that FSS earth station licensees must obtain rights for a much larger license area than they require and also build out a terrestrial 5G network. The Commission has tried such a "dual compliance" approach before (in the 39 GHz band) and failed.³ In fact, in 15 years that the 39 GHz band rules have been in effect, not a single satellite earth station has been deployed in that band. Adopting a similar regime for 28 GHz would make no more sense, as it would require satellite operators to utilize resources to build unwanted terrestrial networks.

The wireless industry has argued for very limited build-out requirements for terrestrial UMFU networks, on the grounds that the Commission "should not adopt performance requirements that would force innovators to 'build to the rules.'"⁴ Yet the proposed "dual compliance" regime would do just that – forcing satellite earth station licensees to build unwanted terrestrial network facilities solely to perfect their regulatory status. Satellite operators that find this too burdensome would be relegated to secondary status, putting their services to customers at risk. The Commission should reject this one-sided proposal.

Sincerely yours,

/s/ Jennifer Manner

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³ See EchoStar Reply Comments at 12-13 (discussing history of the 39 GHz band).

⁴ Letter from Brian M. Josef (CTIA) to Marlene H. Dortch, GN Docket No. 14-177, *et al.*, at 2-3 (May 24, 2016) (proposing safe harbor of four links per million in population for fixed networks and 10 connections per 10,000 in population for mobile, all of which would be deferred until equipment is available from at least two manufacturers).