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Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

***Re: Ex Parte Presentation by the Blooston Rural Carriers
Use of Spectrum Bands Above 24 GHz for Mobile Radio Services, et. al.
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:

The undersigned Blooston Rural Carriers (“Blooston Rural”) hereby join Nextlink Wireless, LLC (“Nextlink”), an operating affiliate of XO Communications, LLC (“XO”) and others in the above-referenced proceeding who are urging the FCC to maintain its current geographic licensing scheme for LMDS services in the 28 GHz band as well as the 39 GHz radio service. As discussed below, the Commission’s proposed move to county-based geographic licenses would impose significant financial and technical burdens on small business and rural telephone company Designated Entities (“DEs”) that currently hold LMDS and 39 GHz market area licenses.

In the Above 24 GHz Notice of Proposed Rulemaking,¹ the FCC is proposing to grant mobile operating rights to existing fixed LMDS and 39 GHz band licensees as well as adopt other changes to the licensing, technical and operating rules for these services, in order to promote the possible mobile use of these “millimeter wave” (or “mmW”) bands to support very high capacity “5G” networks in areas that require such capacity. The Commission has noted that bands above 24 GHz are being considered not for stand-alone mobile services, “but as supplementary channels to deliver ultra-high speed data in specific places, as one component of service packages that will likely include continued use of lower bands to ensure ubiquitous

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

coverage and continuous system-wide coordination.”² The undersigned Blooston Rural Carriers, who hold LMDS A-Block licenses in rural and less-populated rural/urban markets, wish to take advantage of these expanded operating rights if and when new mobile mmW technologies come to pass, as well as to continue to have their licensed spectrum available throughout their current licensed areas for high-capacity wireless backhaul links that can be deployed quickly and without the need for further regulatory approval.

Recent *ex parte* comments from Nextlink³ correctly note that transitioning to a county-based licensing will impose significant new costs and burdens on current license holders. The Commission’s proposal will effectively multiply the costs of network buildout and maintenance (including administrative and legal costs and regulatory fees) exponentially. This will effectively “confiscate” licensed spectrum from many small and rural carriers that have made good faith investments in the millimeter wave bands. Changing the rules of the game years after the spectrum has been auctioned will not only undermine confidence in the FCC’s auction processes but this type of interference with the investment-backed expectations of existing licensees would likely constitute a regulatory taking. The FCC touted the ability for these bands to be used for video programming and high-speed data services in its LMDS Second Report and Order and it went to great lengths to encourage small businesses to become LMDS and 39 GHz licensees. Extending population-based or geographic performance requirements to each newly-subdivided county-based license would make it impossible for the largest incumbent carriers to justify construction of LMDS or 39 GHz systems in rural counties. Even if licenses were given away free of charge and regulatory fees waived in perpetuity, the cost of constructing and maintaining a network of Upper Microwave Flexible Use (“UMFU) picocells would be prohibitive in the vast number of counties nationwide where the population density is less than 100 persons per square mile. Indeed, the Blooston Rural Carriers typically serve areas that have population densities of 10 persons per square mile or less. While the construction of a widespread 5G picocell network may never be feasible in many rural counties, existing license holders are the entities in the best position to deploy mmW services in localized areas or to make their spectrum available for others to deploy service pursuant to the Commission’s existing secondary market policies and rules.

The Blooston Rural Carriers believe that a “one size fits all” licensing and buildout policy for the new UMFU Service – especially when imposed upon existing licensees – would be grossly unfair. The Commission recognized this conundrum over a decade ago when it sought comment on and adopted flexible spectrum policies to facilitate the provision of service in rural areas.⁴ The FCC also adopted various safe harbors for LMDS buildout. Indeed, one such safe harbor allows LMDS licensees to demonstrate compliance with the “substantial service” benchmark through the construction of four permanent links per one million people in its licensed area at the 10-year license renewal mark. These safe harbors should be maintained because they make it feasible for small businesses and rural carriers to deploy services in rural markets while preserving spectrum rights for future opportunities (and secondary market

² NPRM at Para. 8.

³ Notice of Ex Parte Presentation filed by Nextlink Wireless, LLC on June 3, 2016 in GN Docket No.14-177, *et. al.* (“Nextlink June 3 Ex Parte”)

⁴ Cite to Rural Spectrum NPRM and Rural Spectrum R&O (2004).

opportunities such as spectrum leasing) as markets change and new technologies are developed. If the Commission should nonetheless conclude that it is appropriate to subdivide LMDS and 39 GHz licenses on a county basis, it should limit county-based licensing to the spectrum it holds in inventory while exempting incumbent LMDS and 39 GHz licensees from the process. In the alternative, it should make license subdivision optional for all small business and rural telephone companies.

The Blooston Rural Carriers support the Commission's proposal to grant incumbent licensees expanded "flexible use" rights to offer fixed and/or mobile services under their licenses. However, mobile use of the 28 GHz and 39 GHz bands is not expected until the year 2020 at the earliest.⁵ After that, assuming mobile use of these bands expands beyond the larger cities and more densely populated areas, deployment of mobile mmW services may not be viable in rural areas for at least a decade after that. The Commission cannot expect rural LMDS license holders to deploy service that does not yet exist, using equipment that hasn't been developed, to meet a county-based buildout obligation. To impose these requirements on small businesses and rural licensees that have made significant investments in spectrum and equipment in the hopes that a viable business case will develop is unfair and unrealistic.

Please contact the undersigned counsel should you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Cary Mitchell". The signature is fluid and cursive, with a large initial "D" and "M".

D. Cary Mitchell
John A. Prendergast
Counsel to the Blooston Rural Carriers

⁵ Above 24 GHz NPRM at ¶¶ 7, 219.

BLOOSTON RURAL CARRIERS

Consolidated Telcom	Dickinson, ND
PVT Networks, Inc.	Artesia, NM
Townes Tele-Communications, Inc.	Lewisville, AR
Venture Wireless, Inc.....	Highmore, SD