Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz	)	ET Docket No. 10-142

COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. ("T-Mobile") submits these comments in response to the Commission's Notice of Proposed Rulemaking and Notice of Inquiry ("*NPRM*" and "*NOI*") released on July 15, 2010 in the above-captioned proceeding.[1] In the *NPRM*, the Commission seeks comment on two proposals to encourage investment in and terrestrial use of spectrum allocated to the Mobile Satellite Service ("MSS"): (1) adding co-primary mobile and fixed allocations to the 2000-2020 MHz and 2180-2200 MHz MSS bands ("2 GHz MSS band"); and (2) applying the Commission's terrestrial secondary markets regime to all transactions involving the use of MSS bands for terrestrial services.[2] In the *NOI*, the Commission seeks comment on additional actions that will increase the "value, utilization, innovation, and investment" in MSS spectrum.[3]

As discussed below, T-Mobile enthusiastically supports the Commission's proposal to ensure that the 2 GHz band MSS spectrum is put to its highest and best use by adding co-primary

[1] *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, Notice of Proposed Rulemaking and Notice of Inquiry, 25 FCC Rcd. 9481 (2010) ("*NPRM*" and "*NOI*").

[2] *Id.* at ¶ 2.

[3] *Id.* at ¶ 3.

mobile and fixed allocations to the band. T-Mobile also supports the Commission's proposal to extend its secondary markets framework to terrestrial use of all of the broadband-capable MSS bands (*i.e.*, 2 GHz, Big LEO and L-Bands) and believes that application of the secondary markets framework to the 2 GHz MSS band would be particularly appropriate given the dearth of deployment thus far in the band. Moreover, in applying the secondary markets framework, the Commission should extend the availability of immediate processing or approval to lessees whose indirect foreign ownership in excess of 25% has previously been approved by the Commission. Finally, the Commission should pursue voluntary incentive auctions for the 2 GHz MSS band and other options to make the spectrum more readily available for mobile broadband use.

I. THE COMMISSION SHOULD ADD CO-PRIMARY MOBILE AND FIXED ALLOCATIONS TO THE 2 GHZ MSS BAND

In the *NPRM*, the Commission tentatively concludes that it should add primary mobile and fixed allocations to the 2 GHz MSS band, and make those allocations co-primary with the existing MSS allocation in the band.[4] T-Mobile supports this proposal.

Adding co-primary mobile and fixed allocations is a critical first step to accelerating terrestrial wireless broadband deployment in the underutilized 2 GHz MSS band, consistent with the Commission's recommendation in the National Broadband Plan ("NBP").[5] In the NBP, the Commission stated that it should "take actions that will optimize license flexibility sufficient to increase terrestrial broadband use of MSS spectrum."[6] As the Commission recognizes in the *NPRM*, the additional co-primary mobile and fixed allocations will "lay the groundwork for

[4] *Id.* at ¶ 10.

[5] *See* Federal Communications Commission, *Connecting America: The National Broadband Plan*, Recommendation 5.8.4 at 87-88 (rel. Mar. 16, 2010), *available at* www.broadband.gov ("NBP").

[6] *Id.* at 87.

future flexibility in use of this spectrum."[7] In particular, the enhanced flexibility could spur investment and innovation in the 2 GHz MSS band, thereby maximizing intensive use of the band and facilitating increased deployment of wireless broadband services.

The 2 GHz MSS band's proximity to the PCS and AWS bands make the spectrum ideal for terrestrial mobile broadband operations. For example, the band is directly adjacent to the Advanced Wireless Services ("AWS") H Block (1915-1920 MHz and 1995-2000 MHz) and J Block (2020-2025 MHz and 2175-2180 MHz). In addition, the band is very close to the broadband PCS bands (1850-1995 MHz, excluding 1915-1920 MHz). As a result, the spectrum could be used easily by new or existing service providers to provide innovative terrestrial mobile broadband services, whether on a stand-alone basis or in conjunction with other AWS, PCS, or MSS ATC operations.

Co-primary mobile and fixed allocations in the 2 GHz band would also harmonize the band with international spectrum allocations. The 2 GHz MSS band is part of the global IMT-2000 core terrestrial allocation for mobile 3G services. International footnote 5.388 to the Table of Frequency Allocations states:

> 5.388. The bands 1885–2025 MHz and 2110–2200 MHz are intended for use, on a worldwide basis, by administrations wishing to implement International Mobile Telecommunications-2000 (IMT–2000). . . . The bands should be made available for IMT–2000 in accordance with Resolution 212 (Rev. WRC-97). (See also Resolution 223 (WRC–2000).)

Resolution 212 encourages the use of the 2 GHz band for *both* terrestrial and MSS services. It states that "the availability of the satellite component of IMT-2000 in the bands 1980-2010 MHz and 2170-2200 MHz simultaneously with the terrestrial component of IMT-2000 . . . would improve the overall implementation and the attractiveness of IMT-2000 to both developed and

[7] *NPRM* at ¶ 10.

developing countries."[8] As mentioned above, adding co-primary mobile and fixed allocations is the first step to optimizing use of the 2 GHz MSS band.

The Commission also proposes in the *NPRM* that, in the event a 2 GHz MSS license is returned or cancelled, the spectrum covered by the license should not be assigned to the remaining 2 GHz MSS licensee, or made available for a new MSS licensee.[9] T-Mobile supports this proposal. As the Commission recognizes, reassigning the spectrum under the existing mobile satellite rules could severely restrict options for mobile and fixed terrestrial broadband services and substantially delay service deployment.[10] The returned or cancelled spectrum should instead be assigned via auction to a new licensee subject to the more flexible use rules contemplated by the *NPRM*.

II. THE COMMISSION SHOULD EXTEND THE SECONDARY MARKETS SPECTRUM LEASING REGIME TO THE MSS BANDS AND ELIMINATE IMPEDIMENTS TO ITS USE

T-Mobile strongly supports the *NPRM*'s proposal to apply the Commission's existing secondary markets leasing rules to the MSS bands.[11] Extending the secondary markets regime would facilitate more intensive, efficient and innovative use of the currently underutilized MSS bands (especially the 2 GHz MSS band) by facilitating access to the bands by spectrum-constrained providers of mobile broadband services. This increased flexibility would help ensure that the spectrum is put to its highest and best use. Without the ability to take advantage of generally applicable, streamlined leasing procedures, prospective lessees would not be able to

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[8] *Implementation of International Mobile Telecommunications-2000 (IMT-2000)*, World Radiocommunication Conference 1997, Resolution 212, *available at* http://www.itu.int/newsarchive/wrc2000/presskit/resolution_212.html.

[9] *NPRM* at ¶ 15.

[10] *See id.*

[11] *See id.* at ¶ 22.

access the band without the MSS licensee having to file individualized license modification and/or waiver requests.[12] Such a process is inefficient for the Commission and service providers alike.

Extending the secondary markets leasing regime to the MSS bands would be consistent with previous expansions of the services covered by the regime[13] and would continue to fulfill the Commission's original goals for the secondary markets proceeding of "eliminate[ing] regulatory barriers that hinder[] access to spectrum" and "promot[ing] more efficient use of spectrum."[14] Moreover, as the types of services offered using MSS spectrum converge with services offered by terrestrial-based mobile providers, the types of spectrum leasing arrangements available to both should similarly converge, creating "greater predictability, consistency, and transparency."[15] Thus, there is no reason to limit the types of leases available in the MSS bands.[16] As noted above, there are substantial potential synergies in the 2 GHz MSS band in particular because of its proximity to existing AWS and PCS allocations.

To fulfill the Commission's goals of expediting the deployment of mobile broadband throughout the country, promoting competition, and facilitating more intensive use of the MSS spectrum, one minor modification to the current leasing policies is needed for the MSS bands: the Commission should extend the availability of the immediate processing/approval procedures to prospective lessees with indirect foreign ownership exceeding 25%, if that ownership has

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[12] *See id.* at ¶¶ 20-21 (discussing recent orders granting requests by Globalstar and SkyTerra/Harbinger to allow use of MSS spectrum by third parties).

[13] *See id.* at ¶ 19 (noting the application of the spectrum leasing rules to the AWS, BRS and EBS services).

[14] *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order, 18 FCC Rcd. 20604 at ¶ 1 (2003).

[15] *See NPRM* at ¶ 22.

[16] *See id.* at ¶ 24 (seeking comment on whether both spectrum manager and *de facto* transfer leases should be permitted). MSS licensees can contractually bind their lessees to comply with any specific regulatory requirements, including ATC-related obligations.

previously been approved by the Commission. Such a change would enable broadband providers like T-Mobile to compete on a level playing field with other potential lessees without waiting months for Commission approval of leasing arrangements that are needed to expand the delivery of broadband services to the public.

Under the Commission's leasing rules, immediate processing/approval is not available if a "declaratory ruling pertaining to any applicable Commission rule" is required.[17] It is the Commission's current policy that a "supplemental" Section 310(b)(4) declaratory ruling is required each time an entity with more than 25% indirect foreign ownership seeks to acquire new spectrum rights for a geographic area or type of license that is not already explicitly covered by a prior declaratory ruling. The Commission last considered this issue in responding to a 2005 petition for reconsideration or clarification filed by T-Mobile in the secondary markets proceeding.[18] In that order, the Commission affirmed its earlier decision to consider petitions for "blanket" rulings to cover future spectrum leasing transactions only when such petitions are filed "in conjunction with [spectrum lease] applications that would be covered by the requested ruling."[19] Thus, because foreign-owned service providers cannot obtain advance clearance before entering into negotiations with a MSS licensee for the lease of spectrum, they are placed at a competitive disadvantage (and therefore discouraged from accessing spectrum via leasing)

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[17] *See* 47 C.F.R. § 1.9020(e)(2)(i)(C); § 1.9030(e)(2)(i)(C). No amendment to these rules is needed; rather only a modification of the Commission's uncodified policy related to the need for "supplemental" declaratory rulings is required, as discussed below.

[18] *See Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Second Order on Reconsideration, 23 FCC Rcd. 15081 (2008) ("*Second Reconsideration Order*").

[19] *Id.* at n.12.

because any spectrum lease application involving the providers could take several months to be approved.[20]

The current policy should especially be modified with regard to the 2 GHz MSS band, which has already lain fallow for some 13 years, and the Commission should remove all remaining regulatory barriers to ensuring the rapid deployment of the band.[21] Equally important, there is a widely recognized national urgency to increase the deployment of spectrum for broadband services,[22] and the instant proceeding has been initiated specifically for that reason.[23] Thus, to help expedite the deployment of mobile broadband, the Commission should, at a minimum, allow providers to take advantage of the immediate processing procedures if: (1) their foreign ownership has already been approved by the Commission; and (2) they are already providing broadband service and are proposing to lease MSS spectrum to expand that existing service.[24] Such a policy would best fulfill the Commission's competition and broadband policy goals, while ensuring no increased risks to national security.[25]

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[20] Indeed, as an example of the process in place "to speed the processing of any proposed secondary markets transactions not currently covered by existing declaratory rulings," the *Second Reconsideration Order* cites to the grant of a 2006 T-Mobile petition to expand the scope of its existing foreign ownership ruling to cover AWS licenses, in addition to its PCS licenses. That petition, filed on May 10, 2006, was not granted for over five months. *See id.* at ¶ 6, n. 20; *see also* IBFS file no. ISP-PDR-20060510-00013. By participating in the AWS auction, T-Mobile had to commit to purchasing the licenses before having regulatory certainty that it would actually be able to hold the licenses.

[21] The *NPRM*'s characterization of the deployment of service in the 2 GHz band as "a slow process" is an understatement at best. *See NPRM* at ¶ 6.

[22] *See, e.g., id.* at ¶ 1 ("tremendous [broadband] demand growth will soon test the limits of spectrum availability"); NBP at 85 (noting "the accelerating nature of industry analyst demand forecasts" for wireless broadband).

[23] *See NPRM* at ¶ 1.

[24] There can be no rational basis for requiring any additional review for the provision of the same broadband services at 2 GHz that are already being provided at 1.9 GHz. Likewise, there is no reason to require a review of broadband services to be provided to one geographic area when the same broadband services are already being provided in a neighboring geographic area.

[25] The immediate processing/approval of the spectrum lease filings could be explicitly conditioned on the lessee conforming its operations using the new spectrum to any existing national security agreement with Executive Branch agencies.

III. THE COMMISSION SHOULD PURSUE VOLUNTARY INCENTIVE AUCTIONS AND OTHER OPTIONS FOR PROMOTING MOBILE BROADBAND USE IN THE 2 GHZ MSS BAND

In addition to implementing the proposals discussed above, the Commission should pursue other options, including incentive auctions,[26] for the 2 GHz MSS band. The Commission may be able to accomplish its goals through a variety of "incentives," some of which may require Congressional authority, and others which may not. For example, the Commission should not foreclose the use of existing tools that have been successfully employed in the past to move underutilized spectrum to its highest and best use, including reallocation, refarming and modifying service and technical rules. There has been no provision of service to the public via the 2 GHz MSS band since the service was created in 1997,[27] and only two financially troubled licensees currently have rights to the spectrum. Under such circumstances, and in view of the explosion in terrestrial mobile broadband use, the Commission should employ the method(s) that will be the most expedient in making available the maximum amount of spectrum for terrestrial mobile broadband services.

As the NBP noted, incentive auctions, which are based on voluntary participation, may be able to "shift[] a contentious process to a cooperative one" by avoiding the time-consuming procedural hurdles raised by incumbent licensees "that can make it difficult, in practice, for the FCC to reclaim and relicense … spectrum for other purposes."[28] As a market-based mechanism, incentive auctions can help meet the need for additional spectrum for mobile broadband services in a very efficient manner by ensuring that spectrum is only "reallocated" in areas and in

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[26] *See NOI* at ¶ 28 (seeking comment on the use of incentive auctions for the 2 GHz band).

[27] *See NPRM* at ¶ 6; *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, First Report and Order and Further Notice of Proposed Rule Making, 12 FCC Rcd 7388 at ¶ 14 (1997).

[28] NBP at 81.

quantities where there is actual demand, and where the spectrum is valued more highly by the new licensee than by the incumbent.[29]

Incentive auctions would clearly increase the "value, utilization, innovation, and investment in" the 2 GHz band.[30] As discussed above, the 2 GHz band is particularly well-suited for the provision of a wide variety of terrestrial mobile broadband services. An incentive auction for this band could therefore attract a wide range of bidders interested in deploying the spectrum. Moreover, as TIA recently noted, incentive auctions can also provide a means for "incumbents to gain access to additional capital to develop their own business models,"[31] which could in turn promote the more intensive use of the MSS spectrum that is retained by the incumbent. Given the potential benefits of incentive auctions as an additional tool in the Commission's toolbox, the Commission should not delay in pursuing such option.

In addition, the Commission should explore alternative options for providing 2 GHz MSS licensees with the incentive to return spectrum to the Commission for auction and terrestrial use. For instance, the Commission could give 2 GHz MSS licensees the option of returning some of their spectrum to the Commission in exchange for modified licenses that allow them to operate terrestrial networks as discussed in the *NOI*. Under such an approach, an MSS licensee might return a good portion of its spectrum, say at least 50%, in exchange for the right to provide terrestrial services on its remaining spectrum free of any ATC restrictions. Or, the Commission could pursue some options that might permit the MSS licensee to return its spectrum in exchange

[29] *See id.* at 85 ("the use of flexible mechanisms such as incentive auctions to meet the need for more spectrum ensures that the market will self-correct if the forecast [for how much broadband spectrum is needed] proves to be inaccurate"); *see also* Remarks of Chairman Julius Genachowski, Federal Communications Commission, NAB Show 2010 (Apr. 13, 2010) (noting incentive auction designs that "could allow [incumbents] to set a reserve auction price below which their licenses wouldn't transfer").

[30] *See NOI* at ¶ 26.

[31] *See Ex Parte* Presentation of the Telecommunications Industry Association ("TIA"), ET Docket No. 10-142 at 1 (filed Aug. 23, 2010).

for a transferrable bidding credit that could be freely sold to the auction winner, thereby allowing the MSS licensee to monetize its interests.[32] These are just a few suggestions that the Commission might explore, independent of the need for Congressional legislation, that could help make this spectrum more readily available in the marketplace for mobile broadband.

IV. CONCLUSION

For the reasons discussed above, the Commission should add co-primary mobile and fixed allocations to the 2 GHz MSS band and apply the Commission's secondary markets leasing regime to terrestrial use of all broadband-capable MSS bands, with the minor modification of extending the availability of the immediate processing/approval procedures to prospective lessees with indirect foreign ownership exceeding 25%, if that ownership has previously been approved by the Commission. The Commission should also pursue voluntary incentive auctions for the 2 GHz MSS band and other options intended to make that spectrum more readily available for mobile broadband use.

Respectfully submitted,

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[32] *See, e.g.*, Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals, Order, 16 FCC Rcd. 4042 (2000) (granting a transferable auction discount voucher).