

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

In the Matter of)	
)	
New DBSD Satellite Service G.P., Debtor-in- Possession, and TerreStar Licensee Inc., Debtor- in-Possession, Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority)	IB Docket 11-149
)	
DISH Network Corporation Files to Acquire Control of Licenses and Authorizations Held by New DBSD Satellite Services G.P., Debtor-in- Possession and TerreStar License, Inc., Debtor- in-Possession)	IB Docket No. 11-150
)	

COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

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COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®

CTIA – The Wireless Association® (“CTIA”)¹ hereby files these comments in response to the applications by DISH Network Corporation (“DISH”) to acquire control of the licenses for the TerreStar 1 and DBSD G1 satellite systems, as well as the applications by New DBSD Satellite Services G.P., Debtor-in-Possession, and TerreStar Licensee Inc., Debtor-in-Possession (collectively with DISH, the “Applicants”) seeking rule waivers and license modification in connection with their respective ancillary terrestrial components (“ATC”).² CTIA believes that

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization includes Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² CTIA’s filing is in response to the rule waivers and license modifications sought by TerreStar and DBSD in their individual modification applications and by DISH in its applications to acquire control of the subject authorizations. CTIA takes no position on the acquisition of licenses by DISH. *New DBSD Satellite Service G.P., Debtor-in-Possession, and TerreStar Licensee Inc., Debtor-in-Possession, Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority*, Public Notice, IB Docket No. 11-149 (September 15, 2011); *DISH Network Corporation Files to Acquire Control of Licenses and Authorizations Held by New DBSD Satellite Services G.P., Debtor-in-Possession and TerreStar License, Inc., Debtor-in-Possession*, Public Notice, IB Docket No. 11-150 (September 15, 2011).

DISH's application touches on important issues that should be addressed in a proceeding of general applicability, not in the limited context of a single party's application.

Further, DISH's proposed service would create the significant potential for harmful interference to incumbent PCS networks.³ The recent LightSquared proceeding demonstrates the importance of identifying and resolving known interference concerns prior to taking action on a waiver petition. In that proceeding, the Commission granted LightSquared's modification application while leaving unresolved the significant interference issues that were raised by LightSquared's proposed operations.⁴ As a result, the status of the LightSquared network is uncertain, with additional testing ordered to determine the impact of interference to GPS operations.⁵ CTIA urges the Commission not to repeat here the mistakes made in the LightSquared proceeding.

The Commission should instead focus on developing a holistic and comprehensive band plan that considers all of the spectrum available for mobile broadband services as well as the

³ CTIA has standing based on associational standing principles. Under associational standing principles, an association has standing in a proceeding so long as: (1) at least one of its members has standing to sue in its own right; (2) the interests the association seeks to protect are germane to its purpose; and (3) neither the claim asserted nor the relief requested requires the participation of an individual member in the lawsuit. *See, e.g., American Library Association v. FCC*, 401 F.3d 489 (D.C. Cir. 2005). As stated further below, CTIA and its members have a significant interest in the Commission's ongoing MSS and 2 GHz spectrum proceedings, and CTIA has been an active participant in these proceedings. Grant of DISH's application will undermine these ongoing Commission initiatives and adversely affect the wireless industry by inhibiting the utility of spectrum identified by the Commission for terrestrial mobile broadband services. Further, several of CTIA's members are incumbent PCS licensees whose networks will be at the risk of harmful interference if terrestrial uplink operations proliferate in the 2000-2020 MHz band.

⁴ *LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, 26 FCC Rcd 566 at ¶¶ 39-43 (2011) ("*LightSquared Waiver Order*").

⁵ *Status of Testing in Connection With LightSquared's Request for ATC Commercial Operating Authority*, Public Notice, DA 11-1537 (Sept. 13, 2011) (determining that additional testing is needed to ensure that any potential commercial terrestrial services offered by LightSquared will not cause harmful interference to GPS operations).

interactions between the various bands and the interference challenges associated with particular spectrum pairings. The Commission must also carefully examine the impact of the various technical rule waivers DISH has sought, and not grant any waiver that would subject incumbent PCS licensees and/or their customers to harmful interference.

I. INTRODUCTION AND SUMMARY

In its application, DISH indicates that it intends to consolidate the DBSD and TerreStar systems to offer a hybrid satellite and terrestrial mobile/fixed broadband network using 40 MHz of 2 GHz MSS spectrum.⁶ In so doing, the Applicants request three sets of waivers to the Commission's MSS/ATC rules, including waivers of the integrated service requirement, the spare satellite requirement, and various technical provisions.⁷ CTIA submits that DISH's application raises several issues that are more properly addressed in a proceeding of general applicability, rather than in a review of an individual transaction.

Specifically, CTIA notes that through a series of incremental decisions, the Commission has been revising its underlying ATC rules for MSS licensees. CTIA believes that such rule changes are more properly addressed through the Commission's notice and comment rulemaking process, which the Commission has clearly recognized in initiating a notice and comment

⁶ Consolidated Application for Transfer of Authorizations, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279, at 3 (filed Aug. 22, 2011) ("Consolidated Application"). *See also* DBSD North America, Inc., Debtor-in-Possession; New DBSD; Satellite Services G.P., Debtor-in-Possession; and Pendrell Corporation, Transferors, and DISH Network Corporation, Transferee, Amendment to Application for Transfer of Control, IBFS File Nos. SAT-AMD-20110822-00164, SES-AMD-20110822-00986, -00987, -00988, -00989, -00990, at 5 (filed Aug. 22, 2011) ("DBSD Amendment"); New DBSD Satellite Services G.P., Debtor-In-Possession, Application for Modification of Ancillary Terrestrial Component Authority, IBFS File No. SES-MOD-20110822-00985, at 2-7 (filed Aug. 22, 2011) ("New DBSD Modification Application"); TerreStar License Inc., Debtor-in-Possession, Application for Modification of Ancillary Terrestrial Component Authority, IBFS File No. SES-MOD-20110822-00983, at 2-7 (filed Aug. 22, 2011) ("TerreStar Modification Application").

⁷ Consolidated Application at 4-5; DBSD Amendment at 8; TerreStar Modification Application at 4-13; New DBSD Modification Application at 4-8.

process for the 2 GHz MSS spectrum.⁸ By considering future uses of the 2 GHz MSS band in a broader proceeding, the Commission will enable a holistic evaluation of the 2 GHz MSS bands and adjacent spectrum for mobile broadband deployment. By acting on the instant application without consideration of these issues, the Commission would risk undermining its broader mobile broadband spectrum policy efforts.

Further, CTIA is concerned that DISH's proposed network will cause significant harmful interference to incumbent PCS licensees. The numerous technical rule waivers sought by DISH will further raise the risk of interference from the 2 GHz MSS band to adjacent blocks that is well-documented in Commission proceedings. CTIA opposes any operations that would result in interference to incumbent wireless networks. The recent LightSquared proceeding and its associated, ongoing technical issues have demonstrated the importance of resolving known interference concerns prior to taking action such as that requested by DISH.

II. DISH'S APPLICATION IMPLICATES ISSUES THAT SHOULD BE ADDRESSED IN A PROCEEDING OF GENERAL APPLICABILITY.

As stated above, the DISH application is inherently intertwined both with the Commission's ongoing evaluations of its ATC rules and its recent proceedings aimed at promoting mobile broadband at 2 GHz, including in the 2 GHz MSS bands. The relief sought by DISH would have a widespread impact both on the Commission's ATC regime and the deployment of broadband networks at 2 GHz. As such, CTIA strongly believes that these issues should be addressed in a proceeding of general applicability, which will best enable the Commission to develop a full and informed record.

⁸ *Spectrum Task Force Invites Technical Input on Approaches to Maximize Broadband Use of Fixed/Mobile Spectrum Allocations in the 2 GHz Range*, Public Notice, ET Docket No. 10-142, WT Docket Nos. 04-356 and 07-195 (May 20, 2011).

A. Recent Decisions Suggest a Significant Shift in Policy Regarding the Commission’s ATC Gating Requirements.

DISH’s application is the latest in a string of requests by various parties for waiver of the Commission’s ATC gating criteria. The Commission’s numerous recent actions to waive these requirements suggest a decreased emphasis on the terrestrial component’s ancillary status as a general matter.⁹ In light of the specific details of DISH’s application, which seeks rule waivers that would appear to eviscerate the “ancillary” nature of the proposed ATC service, CTIA believes that the time has come for the Commission to address its ATC rules more broadly in a proceeding of general applicability rather than adopt a further waiver of its gating requirements.

When the Commission first adopted its ATC rules, it stated its intent that the terrestrial component not become a stand-alone service.¹⁰ To ensure that ATC service would remain ancillary to MSS, the Commission “established a number of gating requirements to ensure that ATC may only operate after the provision of MSS has commenced and during the period in which MSS continues to operate.”¹¹ The Commission further alerted licensees that it would not permit “gaming” of its ATC rules.¹² The Commission also stressed that “[w]e view full and

⁹ See, e.g., *Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities*, Order and Authorization, 23 FCC Rcd 15975 (2008) (“*Globalstar ATC Order*”); *LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, 26 FCC Rcd 566 (2011) (“*LightSquared Waiver Order*”).

¹⁰ *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, at ¶1 (2003) (“*MSS Flexibility Report and Order*”) (“We do not intend, nor will we permit, the terrestrial component to become a stand-alone service.”).

¹¹ *Id.* at n. 5.

¹² *Id.* (“While it is impossible to anticipate or imagine every possible way in which it might be possible to ‘game’ our rules by providing ATC without also simultaneously providing MSS and while we do not expect our licensees to make such attempts, we do not intend to allow such

complete compliance with each of the requirements as essential to the integrity of our ‘ancillary’ licensing regime.”¹³

In the years since the Commission adopted the *MSS Flexibility Report and Order*, the Commission has issued multiple, increasingly substantial waivers of the ATC gating requirements. In 2008, the Commission issued such a waiver to Globalstar Licensee LLC (“Globalstar”). In granting a temporary waiver of the gating criteria, the Commission found that Globalstar failed to meet the geographic and temporal coverage requirement, the in-orbit spare requirement, and the integrated service requirement.¹⁴ As a result of the Commission’s waiver, however, Globalstar and its terrestrial lessee, Open Range Communications Inc. were permitted to deploy what was essentially a terrestrial broadband service and were not required to come into compliance with the gating criteria until July 2011.¹⁵ In their joint dissenting statement, then-Chairman Martin and Commissioner McDowell warned that the Globalstar waiver “set[] an

‘gaming.’ For example, even if an MSS licensee were to enter an agreement to lease some or all of the access to its authorized MSS spectrum to a terrestrial licensee, such spectrum could only be used if its usage met the requirements to ensure it remained ancillary to MSS and were used in conjunction with MSS operations, i.e., that it met all of our gating requirements. The purpose of our grant of ATC authority is to provide satellite licensees flexibility in providing satellite services that will benefit consumers, not to allow licensees to profit by selling access to their spectrum for a terrestrial-only service.”).

¹³ *Id.* at ¶ 66.

¹⁴ *Globalstar Licensee LLC, Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities*, Order and Authorization, 23 FCC Rcd 15975, at ¶¶ 14-19 (2008) (“*Globalstar ATC Order*”).

¹⁵ *Id.* at ¶ 41.

inappropriate precedent.”¹⁶ When Globalstar was unable to come into compliance with the gating criteria by the required deadline, the Commission suspended its ATC authority.¹⁷

Earlier this year, the Commission granted LightSquared Subsidiary LLC (“LightSquared”) a conditional waiver of the ATC “integrated service” rule.¹⁸ The Commission found that LightSquared’s business model – under which LightSquared’s wholesale customers could offer ATC-only subscriptions to customers – would violate Commission rules if LightSquared’s customers did in fact offer terrestrial-only service to their customers.¹⁹ However, the Commission pointed to several “unique circumstances” of LightSquared’s activities that it believed justified grant of the requested waiver.²⁰ At that time, CTIA noted that “LightSquared’s proposed modification represents a significant departure from the Commission’s ATC regime.”²¹

Now, in its Application, DISH relies on the Commission’s LightSquared waiver as precedent supporting its own request for waiver of the ATC gating criteria.²² DISH seeks waivers of the Commission’s spare satellite requirement, its integrated service requirement, and

¹⁶ *Id.* at Joint Statement of Chairman Kevin J. Martin and Commissioner Robert M. McDowell.

¹⁷ *Globalstar Licensee LLC Application for Modification of License to Extend Dates for Coming into Compliance with Ancillary Terrestrial Component Rules*, Order, 25 FCC Rcd 13114 (2010).

¹⁸ *LightSquared Subsidiary LLC Request for Modification of its Authority for an Ancillary Terrestrial Component*, Order and Authorization, 26 FCC Rcd 566 (2011) (“*LightSquared Waiver Order*”).

¹⁹ *Id.* at ¶ 24.

²⁰ *Id.* at ¶ 25

²¹ Comments of CTIA – The Wireless Association®, SAT-MOD-20101118-00239, at 7 (Dec. 2, 2010).

²² Consolidated Application at 37. *See also* DBSD Amendment at 8; TerreStar Modification Application at 2; New DBSD Modification Application at 2.

numerous other technical rules.²³ DISH has made clear that it intends to offer terrestrial-only handsets that make use of MSS spectrum. However, contrary to DISH's assertions, the LightSquared waiver does not serve as precedent supporting the waivers sought by DISH. The Commission emphasized that it granted LightSquared's waiver as a result of several "unique circumstances" of LightSquared's activities in the L-Band as well as specific commitments made by LightSquared in its filing.²⁴ DISH's request actually goes beyond what was requested by LightSquared. DISH is proposing to operate in the S Band and has made none of the "specific commitments" highlighted by the FCC. Significantly, DISH also specifically indicated that it plans to deploy terrestrial-only handsets, and would be providing its terrestrial-only service directly, not through a wholesale model.²⁵

CTIA has been and continues to be a supporter of policies and rules designed to further the flexible use of MSS spectrum. Nonetheless, just as it noted in the LightSquared proceeding, CTIA believes that an individual application for a waiver is not the appropriate procedural vehicle for adopting a broad-reaching rule change. At the time it adopted its ATC rules, the Commission stressed that "[w]ithout the integrity afforded by these MSS ATC service-rule requirements, an alternative licensing or distribution mechanism should be used."²⁶ However, the Commission's numerous departures from its ATC framework appear to suggest a broader policy shift with regard to MSS/ATC regulations. Through its request, DISH would have the

²³ See, e.g., Consolidated Application at 38-48.

²⁴ *LightSquared Waiver Order* at ¶ 25 ("We find the totality of the facts and circumstances surrounding LightSquared's proposal, including the specific commitments it makes in its filing and several unique circumstances of LightSquared's activities in the MSS L-band, to be consistent with the public interest and the purpose of the MSS/ATC gating criteria.").

²⁵ See, e.g., Consolidated Application.

²⁶ *MSS Flexibility Report and Order* at ¶ 66.

Commission take this leap, resulting in a fundamental policy shift arrived at through a series of incremental decisions aimed at decreasing the significance of the existing ATC regime. Rather than create further changes through the instant application process, the Commission should initiate a general notice and comment rulemaking proceeding on this issue, as it has already suggested it would.²⁷ By so doing, the Commission will best promote the development of a complete, informed record.

B. A Rulemaking Proceeding Will Enable a Holistic Evaluation of the 2 GHz MSS Bands and Adjacent Spectrum for Mobile Broadband Deployment.

CTIA also supports a general rulemaking proceeding on the issues raised by DISH's application because it will enable a holistic, informed evaluation of 2 GHz MSS spectrum and how to best develop it and adjacent bands for terrestrial services. Indeed, the Commission already has an open proceeding that intersects with the issues raised by DISH's application, and which could be undermined by the actions taken by the Commission with respect to DISH's waiver request. As described in detail below, the Commission should consider these issues in a single, comprehensive rulemaking.

CTIA has long supported the use of the MSS bands for terrestrial mobile broadband services. Recent proceedings surrounding this band have highlighted the characteristics of 2 GHz MSS spectrum that make it ideally suited for the provision of terrestrial mobile broadband. Further, the allocation of additional spectrum is necessary to address a looming spectrum crunch that threatens to undermine the continued innovation that is the wireless industry's hallmark.

While the benefits of 2 GHz MSS spectrum are numerous, one key characteristic of this

²⁷ See *infra* at 11-12; See *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*; Report and Order, FCC 11-57, at ¶ 13 (2011) (“[w]e anticipate issuing a notice of proposed rulemaking on subjects raised in the *MSS NOI*, including possible service rule changes that could increase investment and utilization of the band in a manner that further serves the public interest”).

spectrum is its proximity and/or adjacency to spectrum already identified, allocated, or licensed for terrestrial mobile broadband services. With this fact in mind, the Commission recently issued a Public Notice seeking input on the best allocation of 2 GHz spectrum. In that proceeding, CTIA and others urged the Commission to undertake a holistic evaluation of spectrum between 1.6 and 2.3 GHz to ensure a band plan that would make the most efficient use of this spectrum while preventing interference to incumbent licensees.²⁸

DISH's application represents another example of why it is critical for the Commission to comprehensively examine spectrum in the 2 GHz band. As stated in more detail below, DISH's proposal raises significant interference concerns with respect to incumbent PCS spectrum operations, and it could greatly diminish the utility of AWS-2 spectrum. In response to the Commission's 2 GHz Public Notice, numerous parties highlighted the complex interplay of the various bands in the 2 GHz range, and how Commission action with respect to one or more blocks could have a significant impact on the others. For example, T-Mobile observed that certain of the Commission's 2 GHz proposals would "orphan" the AWS-2 H Block and part of the J Block.²⁹ And Ericsson argued that the Commission's band plan concepts "appear to ignore the suitability of much or all of the existing AWS-3 and AWS-2 upper J Block spectrum for

²⁸ See, e.g., Comments of AT&T Inc., ET Docket No. 10-142, at 4 (July 8, 2011) ("AT&T 2 GHz Comments") (urging the Commission to "engage in a holistic and comprehensive approach to band-planning in which the 2 GHz MSS frequencies would be addressed as part of a larger, coordinated band plan developed to make most efficient use of spectrum for terrestrial mobile services"); Comments of CTIA – The Wireless Association®, ET Docket No. 10-142, at 11 (July 8, 2011); Reply Comments of United States Cellular Corporation, ET Docket No. 10-142, at 6-7 (July 22, 2011) ("U.S. Cellular 2 GHz Reply Comments") ("The Commission should take a holistic approach to band plan development incorporating creative alternatives to the band plan 'concepts' identified in the Commission's Public Notice so that 2 GHz MSS spectrum can be repurposed as compatible extensions of the existing and new AWS bands.").

²⁹ Comments of T-Mobile USA, Inc., ET Docket No. 10-142, at 11 (July 8, 2011) ("T-Mobile 2 GHz Comments").

wireless broadband,”³⁰ and also noted that allocation of part of the AWS-3 band would preclude more valuable pairings.³¹

Should the Commission grant DISH’s application, it will place incumbent licensees at the risk of considerable harm and potentially foreclose highly beneficial uses of adjacent spectrum. Only through a notice and comment rulemaking process can the Commission fully vet and explore an overall plan for the entire 2 GHz band – not through a “one-off” waiver approach as suggested by the DISH request. If the Commission grants DISH’s requested waiver, the Commission would undermine its ongoing MSS rulemaking and its initiative to encourage the growth of terrestrial mobile broadband in the 2 GHz range. Indeed, the Commission stated in its recent *MSS Report and Order* that it is planning to issue a Notice of Proposed Rulemaking on subjects raised in its previous Notice of Inquiry, including potential terrestrial services in the 2 GHz MSS spectrum and how to increase value, utilization, innovation, and investment in all MSS bands.³²

Further, an application by a single party is not the proper vehicle for the Commission to allocate the terrestrial rights that DISH seeks. What DISH has proposed is essentially to convert the 2 GHz MSS allocation to one where terrestrial-only service is offered and terrestrial base

³⁰ Comments of Ericsson, ET Docket No. 10-142, at 7 (July 8, 2011) (“Ericsson 2 GHz Comments”).

³¹ *Id.*

³² See *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*; Report and Order, FCC 11-57, at ¶ 13 (2011) (“[w]e anticipate issuing a notice of proposed rulemaking on subjects raised in the *MSS NOI*, including possible service rule changes that could increase investment and utilization of the band in a manner that further serves the public interest”); *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, FCC 10-126, ¶¶ 26-34 (2010) (“*2010 MSS Flexibility Notice*”).

stations and handsets will be ubiquitous.³³ When the Commission adopted its ATC rules in 2003, the contemplated ancillary status of ATC systems was central to the Commission's finding that ATC authorizations should not be treated as initial licenses under Section 309(j) and subject to the Commission's competitive bidding requirements.³⁴ Indeed, the Commission's ongoing proceedings involving the 2 GHz MSS band demonstrate widespread support for incentive auctions as a means to allocate this spectrum for terrestrial services.³⁵

In its 2010 MSS Flexibility NPRM and NOI proceeding, the Commission sought comment on alternative approaches to deploying 2 GHz MSS spectrum for mobile broadband.³⁶ CTIA also supports alternative mechanisms, including appropriate leasing proposals, for bringing 2 GHz MSS spectrum to market in a manner that balances public interest considerations concerning unjust enrichment alongside the critical need for mobile broadband spectrum. The Commission (and CTIA and its members) have long been concerned about the potential for unjust enrichment of an incumbent that has not fully complied with its license conditions or has otherwise profited unjustly from its spectrum holdings.³⁷ As the Commission works to bring this

³³ See, e.g., Consolidated Application at 25-26, 39-40.

³⁴ *MSS Flexibility Report and Order* at ¶ 224.

³⁵ See Comments of the Consumer Electronics Association, ET Docket No. 10-142, at 7-8 (July 8, 2011) ("CEA 2 GHz Comments"). See also AT&T 2 GHz Comments at 7-8; Ericsson 2 GHz Comments at 2; T-Mobile 2 GHz Comments at 11-12; Comments of the Telecommunications Industry Association, ET Docket No. 10-142, at 6-7 (July 8, 2011) ("TIA 2 GHz Comments"); Comments of Verizon Wireless, ET Docket No. 10-142, at 2 (July 8, 2011) ("Verizon Wireless 2 GHz Comments").

³⁶ *2010 MSS Flexibility Notice* at ¶¶ 28-29 (seeking comment on the use of incentive auctions and other approaches, including granting 2 GHz licensees the option to return some of their spectrum in exchange for greater flexibility with respect to their remaining spectrum).

³⁷ See, e.g., *Applications for License and Authority to Operate in the 2155-2175 MHz Band, Petitions for Forbearance Under 47 U.S.C. § 160*, Order, 22 FCC Rcd 16563, ¶¶ 10-11 (2007) ("Indeed, we have concluded in the past that [competitive bidding] best serves the public interest because it is the one most likely to result in the selection of licensees that will value the spectrum the most and put it to its highest and most efficient use. Based on the record compiled in this proceeding

much need spectrum to market, CTIA notes that such issues need to be carefully considered. A single party's application, through a waiver process, is not the appropriate vehicle for creating and allocating such terrestrial rights.

III. DISH'S PROPOSED SERVICE WILL RISK SIGNIFICANT HARMFUL INTERFERENCE TO INCUMBENT PCS LICENSEES.

In its Application, DISH requests waivers of numerous technical rules governing operation in the 2 GHz MSS spectrum.³⁸ Such widespread use of terrestrial facilities in this band, as contemplated by DISH, places adjacent PCS operations at significant risk of harmful interference from the MSS band. Further, such operations could severely limit the utility of other bands not yet auctioned but which have been identified by the Commission as candidates for hosting terrestrial mobile broadband services. As such, CTIA submits that the Commission should not take any action on DISH's application without undertaking a comprehensive examination of potential interference and resolving such issues.

The risk of interference from the 2 GHz MSS bands to adjacent blocks is well-documented in Commission proceedings. As TerreStar correctly noted, "[t]he juxtaposition of uplink and downlink bands in adjacent spectrum creates unique interference issues."³⁹ The MSS uplink spectrum is directly adjacent to the AWS H Block contemplated for future broadband use,

so far, we conclude that the benefits of considering such a licensing regime . . . even given the potentially longer timeline to the provision of actual service, outweigh the value of any purported public interest benefits of providing M2Z or NetfreeUS with a route to licensing that, by its very nature, precludes even the possibility of an auction and would simply give either company spectrum for free.").

³⁸ Consolidated Application at 43-48; TerreStar Modification Application at 8-13.

³⁹ Comments of TerreStar Networks Inc., ET Docket No. 10-142, at 4-5 (July 8, 2011). *See also, e.g.*, TIA 2 GHz Comments at 5 ("A lack of separation between the uplink and downlink frequency bands can pose significant interference issues, and the potential for harmful interference to the services in these bands would also create considerable uncertainty in the marketplace.").

5 megahertz away from the PCS G Block licensed to Sprint Nextel, and 10 MHz from the PCS C Block that has been deployed by several wireless carriers. Numerous parties have argued that if the 2 GHz MSS spectrum is to be used for terrestrial uplink operations, a guard band will be needed to protect PCS operations, with several parties suggesting that the H Block be converted to a guard band.⁴⁰ However, as the Telecommunications Industry Association commented, “a 5 MHz guard band may not be sufficient separation between PCS and MSS ATC operations.”⁴¹ Verizon Wireless similarly observed that use of the 2000-2020 MHz portion of the repurposed MSS band for mobile transmissions “would create a significant interference potential” between the repurposed MSS system and incumbent PCS operations at 1930-1990 MHz.⁴² In the ongoing 2 GHz proceeding, commenters have urged the Commission to undertake a thorough evaluation of the interference issues raised by various proposals for the 2 GHz band.⁴³ CTIA opposes any operations that would cause harmful interference to incumbent wireless operations, as should the Commission, and believes that the Commission must examine and resolve known interference concerns prior to taking action on DISH’s application.

⁴⁰ Ericsson 2 GHz Comments at 9; TIA 2 GHz Comments at 5; T-Mobile 2 GHz Comments at 11.

⁴¹ TIA 2 GHz Comments at 6. *See also* Ericsson 2 GHz Comments at 9 (“For instance, incentive auctions would be an appropriate means to establish an additional guard band between the PCS downlink spectrum and the MSS uplink spectrum beginning at 2000 MHz, given that the 5 MHz of guard band using the upper H Block will still be insufficient.”).

⁴² Verizon Wireless 2 GHz Comments at 6.

⁴³ *See, e.g.*, AT&T 2 GHz Comments at 1-2 (“In bringing to use more mobile broadband spectrum, the Commission should focus on developing a holistic and comprehensive band plan that considers all the spectrum available for mobile broadband services as well as the interactions between the various bands and the interference challenges associated with particular spectrum pairings.”); Ericsson 2 GHz Comments at 3 (“To get the ‘biggest bang for the buck’ in its spectrum realignment efforts, the Commission can take steps that will maximize the efficiency with which spectrum can be used while ensuring the protection of PCS operations from interference.”).

The recent LightSquared proceeding demonstrates the importance of identifying and resolving known interference concerns prior to taking action on a waiver petition. In that proceeding, the Commission granted LightSquared's modification application while leaving unresolved the significant interference issues that were raised by LightSquared's proposed operations.⁴⁴ As a result, the status of the LightSquared network is uncertain, with additional testing ordered to determine the impact of interference to GPS operations.⁴⁵ CTIA urges the Commission not to repeat the mistakes made in the LightSquared proceeding. Instead, to get the greatest benefit in its spectrum realignment efforts, the Commission should focus on developing a holistic and comprehensive band plan that considers all the spectrum available for mobile broadband services as well as the interactions between the various bands and the interference challenges associated with particular spectrum pairings, and it should carefully examine the impact of the various technical rule waivers DISH has sought, and not grant any waiver that would subject incumbent PCS licensees and/or their customers to harmful interference.

⁴⁴ *LightSquared Waiver Order* at ¶¶ 39-43.

⁴⁵ *Status of Testing in Connection With LightSquared's Request for ATC Commercial Operating Authority*, Public Notice, DA 11-1537 (Sept. 13, 2011) (determining that additional testing is needed to ensure that any potential commercial terrestrial services offered by LightSquared will not cause harmful interference to GPS operations).

IV. CONCLUSION

For the foregoing reasons, CTIA submits that a proceeding of general applicability is necessary to properly evaluate the important policy issues implicated by the DISH application. Further, given the interference risks highlighted by PCS licensees, the Commission must undertake a vigorous analysis of the interference issues raised by DISH's application and not take any action that would result in interference to incumbent PCS licensees.

Respectfully submitted,

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October 17, 2011

CERTIFICATE OF SERVICE

I, Shanée Meeks, do hereby certify that on this 17th day of October, 2011, I caused copies of the foregoing “Comments of CTIA – The Wireless Association®” to be served on the following, First-Class Mail, postage pre-paid:

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