

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

In the Matter of	)	
	)	
New DBSD Satellite service G.P., Debtor-in-	)	IB Docket No. 11-149
Possession, and TerreStar Licensee Inc.,	)	
Debtor-in-Possession, Request for Rule	)	
Waivers and Modified Ancillary Terrestrial	)	
Component Authority	)	

**REPLY OF AT&T**

AT&T Services, Inc. (“AT&T”) on behalf of itself and its subsidiaries, hereby submits the following Reply to the Consolidated Opposition and Response to Comments of the Applicants.<sup>1</sup> As the Applicants note, neither AT&T nor any other party filed in opposition to the transfer of control of DBSD and TerreStar to DISH.<sup>2</sup> Moreover, AT&T fully supports the Commission’s efforts to alleviate spectrum shortages by allocating additional spectrum for terrestrial mobile broadband services, including the S band. However, AT&T submits this Reply to explain that both Commission precedent and the public interest dictate that any conversion of the 2 GHz Mobile Satellite Service (“MSS”) band to predominantly terrestrial operations should be conducted through rulemaking, rather than an *ad hoc* waiver process. Additionally, the action the Commission is asked to take would essentially convert the S band from satellite spectrum with an ancillary terrestrial component to far more valuable terrestrial mobile broadband spectrum with an ancillary satellite service condition. Under these circumstances, it would be

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<sup>1</sup> “Applicants” refers to DISH Network Corporation (“DISH”), DISH’s wholly owned direct subsidiary Gamma Acquisition L.L.C., TerreStar Networks, Inc., Debtor-in-Possession (“TerreStar”), Pendrell Corporation, DBSD North America Inc., Debtor-in-Possession (“DBSD NA”), and New DBSD Satellite Services G.P., Debtor-in-Possession (together with DBSD NA, “DBSD”).

<sup>2</sup> See Consolidated Opposition to Petitions to Deny and Response to Comments of Applicants at 3, IB Docket Nos. 11-149, 11-150 (filed Oct. 27, 2011) (“Opposition”).

contrary to the public interest to grant licenses for such repurposed spectrum without recovering for the public a portion of the increased spectrum value.<sup>3</sup>

**I. REPURPOSING OF THE 2 GHZ BAND SHOULD BE CONDUCTED THROUGH A RULEMAKING.**

AT&T agrees with the assessment of the Applicants and various commenters that the 2 GHz MSS band represents a significant opportunity to achieve the spectrum goals of the National Broadband Plan. But to the extent that the Commission wishes to repurpose this spectrum from satellite to terrestrial use, as a matter of precedent and sound spectrum policy, the Commission should proceed through rulemaking. The integrated service requirement is a core aspect of the Commission's Ancillary Terrestrial Component ("ATC") service rules that is intended to preserve satellite services for the public. Dispensing with this requirement is tantamount to a reallocation and requires the deliberative safeguards of a rulemaking.

Waiving the ATC integrated service requirement for the 2 GHz MSS band would constitute a dramatic shift away from the Commission's ATC policy.<sup>4</sup> The Commission has made clear that ATC should not create a standalone terrestrial system.<sup>5</sup> In giving MSS operators the authority to deploy an ATC, the Commission indicated that its decision was "based upon the premise that ATC remains 'ancillary' to a fully operational space-based MSS system."<sup>6</sup> Such ancillary services "are integrated with the satellite network"; "are provided for the purpose of

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<sup>3</sup> See 47 U.S.C. 309(j).

<sup>4</sup> AT&T notes that if the Applicants' request for waivers is granted, every MSS operator that has received ATC authority will have also received an integrated service waiver request, constituting a *de facto* elimination of this significant regulatory provision.

<sup>5</sup> 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, 1965 ¶ 1 (2003) ("*ATC Order*") ("We do not intend, nor will we permit, the terrestrial component to become a stand-alone service.").

<sup>6</sup> *Id.*, ¶ 67.

augmenting signals in areas where the principal service signal, the satellite signal, is attenuated”; and exclude “services that differ materially in nature or character from the principal services offered by MSS providers.”<sup>7</sup> The Commission reiterated this commitment to ATC remaining truly ancillary when it clarified that the integration requirement “forbids MSS/ATC operators from offering ATC-only subscriptions.”<sup>8</sup>

More than being merely a technical rule or one provision among many, the integrated service requirement advances a central policy tenet of the ATC regime—ensuring that MSS spectrum is used for the provision of a substantial satellite service and that ATC is used only to fill gaps in MSS coverage. The Applicants seek to flip this presumption through their waiver requests, which are intended to position them primarily as providers of wireless broadband services over their “nationwide terrestrial network.”<sup>9</sup> The request are based upon the presumption of substantially greater interest in the terrestrial network than the satellite service. Such a reversal in the intended use of the spectrum constitutes a significant change in policy, which should be undertaken through a rulemaking.

The Applicants point to the National Broadband Plan’s identification of the 2 GHz MSS band as a potential source for terrestrial wireless spectrum as supporting the public interest benefits of their waiver requests and assert that the Commission’s addition of co-primary terrestrial Fixed and Mobile allocations to the 2 GHz band eliminate the need for additional rulemaking in this instance.<sup>10</sup> However these arguments are inconsistent with the Commission

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<sup>7</sup> *Id.*, ¶ 68.

<sup>8</sup> 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, *Memorandum Opinion and Order and Second order on Reconsideration*, 20 FCC Rcd.4616, 4628 ¶ 33 (2005).

<sup>9</sup> *See, e.g.*, Opposition at 16.

<sup>10</sup> *See id.* at 6-10, 14.1

precedent. As an initial matter, in creating the co-primary terrestrial allocations in the 2 GHz band, the Commission explained that this did not change existing authorizations, stating that “the MSS licensees in the band will continue to operate under the terms of their existing licenses and must comply with all of the Commission’s satellite and ATC rules,” and that it anticipated issuing a future notice of proposed rulemaking addressing MSS service rule changes.<sup>11</sup>

More fundamentally, the applicants’ waiver requests would be tantamount to transitioning the 2 GHz MSS band to use as a commercial mobile radio service (“CMRS”), a transition that precedent demonstrates is most appropriately done through a rulemaking. To illustrate, when the Commission created the personal communications service and when it transitioned the specialized mobile radio service to CMRS use, it did so through rulemaking proceedings. Those rulemakings permitted the participation of all affected parties and enabled thorough consideration of implementation issues—including interference concerns and questions regarding relocation of and sharing with incumbent operators—as they developed.<sup>12</sup> In both instances, when unforeseen challenges were discovered, the Commission, industry, and public all benefited from the existence of an established administrative process through which the new issues could be addressed.

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<sup>11</sup> 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*, 26 FCC Rcd. 5710, 5714 ¶ 2 (2011).

<sup>12</sup> *See, e.g.*, Amendment of the Commission's Rules to Establish New Personal Communications Services, *Second Report and Order*, 8 FCC Rcd 7700 (1993); Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, *Second Report and Order*, 9 FCC Rcd 1411 (1994).

By contrast, Globalstar's ill-fated integrated service waiver<sup>13</sup> and the ongoing complications surrounding LightSquared's proposed terrestrial deployment are clear evidence of the inappropriateness of waiver proceedings for such complex issues involving multiple parties.<sup>14</sup> Just as LightSquared's terrestrial deployment plans raised interference concerns regarding the interaction with incumbent GPS operations that were not properly addressed before issuance of the waiver, CTIA has identified a potential for interference between the Applicants' proposed deployment and incumbent PCS operations.<sup>15</sup> Addressing the interference issues raised by CTIA, and any other issues that may arise from transitioning the S-band to terrestrial mobile service, requires a rulemaking rather than an *ad hoc* waiver process.<sup>16</sup>

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<sup>13</sup> See 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) (ordering Globalstar to suspend ATC operations for failure to meet conditions of its waiver).

<sup>14</sup> See Status of Testing in Connection with LightSquared's Request for ATC Commercial Operating Authority, *Public Notice*, 26 FCC Rcd 12913 (2011) (noting the need for additional testing to address concerns regarding potential interference between LightSquared's proposed deployment and incumbent GPS operations).

<sup>15</sup> See Comments of CTIA—The Wireless Association at 13, IB Docket Nos. 11-149, 11-150 (filed Oct. 17, 2011).

<sup>16</sup> In response to interference concerns, the Applicants' Opposition raises the existence of 3GPP standards and the unused status of the AWS-2 H block as defenses. See Opposition at 20-21. However, industry standards are not sufficient sources of interference protection, that is the role of the Commission's rules, and relying upon the use of the AWS-2 H block or some internal spectrum as a guard band to prevent interference would effect a waste of spectrum. Indeed, the Applicants' proposed usage of the band as contemplated by the waiver requests would make significantly less efficient use of spectrum than many of the band plans proposed in response to the Commission's Spectrum Task Force 2 GHz Public Notice. See, e.g., Comments of AT&T, ET Docket No. 10-142, WT Docket Nos. 04-356, 07-195 (filed July 8, 2011). This waste of spectrum again illustrates the danger of proceeding through ad hoc waivers rather than systematically through rulemaking.

## **II. REPURPOSING THIS SPECTRUM BY WAIVER WOULD ELIMINATE ANY RECOVERY FOR THE PUBLIC OF A PORTION OF THE INCREASE IN SPECTRUM VALUE, CONTRARY TO THE PUBLIC INTEREST.**

When Congress authorized the use of competitive bidding to award radio licenses, it did so not only to ensure that licenses would be awarded in a manner designed to ensure that spectrum would be put to its best and highest use, but also to ensure that the United States would recover “for the public a portion of the value of the public spectrum resource made available for commercial use.” In this case, the grant of the Applicants’ waiver requests would essentially convert satellite spectrum into a 40 MHz, nationwide block of prime mobile broadband spectrum worth billions more than the current MSS authorizations, yet the Commission, by proceeding through waiver rather than a rulemaking, would have failed to recover for the public even a small portion of the increased value it created through this reallocation, instead transferring that value to a single private party. At time of massive deficits, it would be untenable for an arm of the government to forgo the billions of dollars that would be the public’s portion of the enhanced value of this spectrum. This clearly would be contrary to the public interest.<sup>17</sup>

## **III. SPRINT’S PROPOSAL TO INCORPORATE ANTICOMPETITIVE AND UNLAWFUL CONDITIONS ON THESE LICENSES SHOULD BE REJECTED.**

The Commission should reject Sprint’s proposal that the Commission repeat a prior error by imposing the same anticompetitive and unlawful restrictions on secondary market

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<sup>17</sup> The grant of the transfer applications in conjunction with a grant of the waiver applications would be tantamount to issuance of new initial terrestrial broadband licenses requiring an auction under Section 309(j) of the Communications Act. Section 309(j) of the Communications Act requires that where the Commission accepts mutually exclusive applications for any initial license it must assign the license through competitive bidding. Were the Commission to proceed by a reallocation rulemaking rather than a waiver, mutually exclusive applications would almost certainly be filed for the resulting nationwide terrestrial mobile broadband license at 2 GHz. Section 309(j) further requires that the Commission “recover[] for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource.” 47 U.S.C. § 309(j)(3)(C).

transactions, spectrum access and network capacity that were imposed in the *Harbinger/SkyTerra Order*.<sup>18</sup> As explained in AT&T's Petition for Reconsideration of that order, those restrictions were procedurally improper, in that they affected the rights of non-parties to the proceeding without any notice or comment and they were not based on any record evidence whatsoever.<sup>19</sup> To adopt such restrictions here would be no less harmful to competition and no less unlawful. In this regard, AT&T also fully supports the Opposition of Verizon Wireless, which sets forth in detail the legal, factual, and policy reasons why extension of the *Harbinger/SkyTerra Order* conditions here would be impermissible.<sup>20</sup>

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<sup>18</sup> SkyTerra Communications, Inc., Transferor and Harbinger Capital Partners Funds, Transferee Applications for Consent to Transfer of Control of SkyTerra Subsidiary, LLC, IB Docket No. 08-184, *Memorandum Opinion and Order and Declaratory Ruling*, 25 FCC Rcd 3059 (2010) ("*Harbinger/SkyTerra Order*").

<sup>19</sup> See Petition for Reconsideration of AT&T Inc., IB Docket No. 08-184 (filed Mar. 31, 2010).

<sup>20</sup> See Opposition of Verizon Wireless, IB Docket No. 11-149 (filed Oct. 27, 2011).

#### IV. CONCLUSION

For the reasons discussed above, AT&T recommends that any further changes to the Commission's MSS ATC gating criteria should only be conducted through a formal rulemaking proceeding.

Respectfully submitted,

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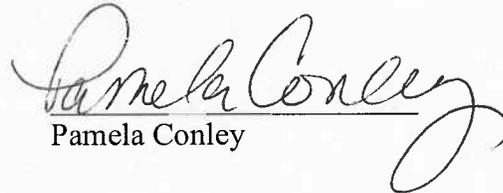
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