

**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
	)	

**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

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**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

**I. INTRODUCTION AND SUMMARY**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> respectfully submits these reply 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”).<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> As CTIA stated in its initial Comments, its 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 continues to take 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*

In their Consolidated Opposition to Petitions to Deny and Response to Comments (“Opposition”), the Applicants underscore the important role that 2 GHz MSS spectrum will play in addressing the looming spectrum crunch and continuing the public interest benefits of wireless. However, the short-term solution advocated by DISH in its waiver requests may preclude Commission efforts to put the 2 GHz band to its highest and best use. CTIA supports the Commission addressing the issue of what to do with the spectrum in a comprehensive rule making on the 2 GHz band. Further, CTIA reiterates that there remain significant questions about how new terrestrial rights, such as those sought by DISH should be allocated. Finally, CTIA urges the Commission to evaluate both the technical standards for LTE deployment in the S Band and the technical rule waivers sought by DISH to ensure that incumbent licensees will not be harmed by DISH’s proposed operations.

**II. THE COMMISSION MUST UNDERTAKE A COMPREHENSIVE EXAMINATION OF THE 2 GHZ BAND THROUGH A RULE MAKING.**

The record in this proceeding, including the Opposition, affirms CTIA’s position that spectrum in the 2 GHz range will play an important role in addressing the spectrum crunch facing the wireless industry. However, DISH’s waiver requests would have the Commission bypass consideration of critical issues involving the 2 GHz band, potentially precluding full and efficient use of both the MSS bands and adjacent spectrum. For this reason, CTIA supports a comprehensive rule making on these issues.

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*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).

Chairman Genachowski has cited the looming “spectrum crunch” as “the single biggest threat to one of the most promising parts of our economy,”<sup>3</sup> finding that it “threatens American leadership in mobile and the benefits it can deliver to our country.”<sup>4</sup> In previous filings, CTIA has reiterated its support for the allocation of additional spectrum for mobile broadband, noting the particularly important role that 2 GHz spectrum can play in alleviating the spectrum crunch.<sup>5</sup> Similarly, T-Mobile stressed that there is a “critical need for the FCC to make more spectrum available for terrestrial wireless services.”<sup>6</sup> And MetroPCS stated that it is “critically important” that the Commission enable terrestrial use of the 2 GHz MSS band.<sup>7</sup>

Indeed, CTIA has long supported the use of 2 GHz MSS spectrum for terrestrial services, citing in 2001 the need for additional CMRS spectrum and questioning whether the public interest would better be served by using this spectrum to “help alleviate the shortage of spectrum for other services.”<sup>8</sup> CTIA noted statements by MSS applicants that the industry as a whole was

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<sup>3</sup> Remarks of FCC Chairman Julius Genachowski, U.S. Chamber of Commerce at 5 (Oct. 14, 2011), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-310395A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310395A1.pdf).

<sup>4</sup> Remarks of FCC Chairman Julius Genachowski at CTIA Wireless 2011 at 6 (March 22, 2011), *available at* [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-305309A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-305309A1.pdf).

<sup>5</sup> *See, e.g.*, Comments of CTIA – The Wireless Association®, ET Docket No. 10-142 (July 8, 2011); Reply Comments of CTIA – The Wireless Association®, ET Docket No. 10-142 (July 22, 2011).

<sup>6</sup> Letter from Kathleen O’Brien Ham, Vice President, Regulatory Affairs, T-Mobile USA, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 11-149, at 1 (Oct. 17, 2011) (“T-Mobile Comments”).

<sup>7</sup> Petition of MetroPCS Communications, Inc. to Require Further Public Interest Showing or, in the Absence of Such a Showing, to Deny the Dish Network Corporation Applications, IB Docket No. 11-150, at 12 (Oct. 17, 2011) (“MetroPCS Petition”).

<sup>8</sup> Petition for Rulemaking of the Cellular Telecommunications & Internet Association at 1 (filed May 18, 2001) (“2001 CTIA Petition for Rulemaking”). *See also* Petition for Reconsideration of the Cellular Telecommunications & Internet Association, ET Docket Nos. 00-258 and 95-18, IB Docket No. 99-81, at 8 (Oct. 15, 2001) (“2001 CTIA Petition for Reconsideration”).

not viable and evidence that the industry was financially troubled,<sup>9</sup> finding that the circumstances surrounding the MSS spectrum “provides the Commission with a unique opportunity to reallocate this spectrum to help meet other demands.”<sup>10</sup> In recent years, the MSS industry itself has been moving toward terrestrial uses of this spectrum through requests for ATC authority and waivers to allow them to provide terrestrial-only services. As such, proceeding to a rule making to determine the highest and best use of this spectrum is, as CTIA has consistently urged, the appropriate next step.

Further, a rule making would enable the Commission is 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 broadband services.”<sup>11</sup> As CTIA and others stressed in the Commission’s 2 GHz Public Notice proceeding, the Commission must avoid “sacrificing significant public interest benefits in the interest of expediency”<sup>12</sup> by considering individual spectrum blocks without regard to the impact of such decisions on other 2 GHz spectrum. While DISH posits that its waiver requests are “limited to the facts and circumstances of the 2 GHz

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<sup>9</sup> 2001 CTIA Petition for Reconsideration at 6.

<sup>10</sup> 2001 CTIA Petition for Rulemaking at 5. In 2006, CTIA cautioned the Commission that the grant of additional spectrum to TMI Communications and Company Limited Partnership and ICO Satellite Services lacked a proper basis given the lack of demonstrated need for additional spectrum, and that the Commission should “commence a rulemaking to consider the best use of the unassigned spectrum for the benefit of the public – not just these two private entities.” Comments of CTIA – The Wireless Association® In Support of the Petitions For Reconsideration, IB Docket Nos. 05-220 and 05-221 at 1-2 (Feb. 16, 2006).

<sup>11</sup> Comments of AT&T Inc., ET Docket No. 10-142, at 4 (July 8, 2011) (“AT&T 2 GHz Comments”).

<sup>12</sup> *Id.* at 5.

MSS band,”<sup>13</sup> the actions the Commission takes with respect to these requests will have a significant impact on its long-range band planning in the 2 GHz range. For example, numerous parties noted in the 2 GHz proceeding that terrestrial uplink operations in the 2000-2020 MHz portion of the 2 GHz MSS band could preclude use of the adjacent H Block for broadband services.<sup>14</sup> Granting DISH the waivers it seeks could also impact full and efficient use of the H Block, J Block, and AWS-3 bands highlighted by the Commission in its 2 GHz proceeding, as well as additional federal spectrum that may become available.<sup>15</sup>

Through its application, DISH is essentially asking the Commission to do exactly what the wireless industry cautioned the Commission *against* doing in the 2 GHz proceeding. Only through a notice and comment rule making 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.

### **III. A RULE WAIVER IS AN INAPPROPRIATE PROCEDURAL VEHICLE TO ALLOCATE THE NEW TERRESTRIAL RIGHTS SOUGHT BY DISH.**

In addition to the important question of how the 2 GHz MSS spectrum should be most effectively deployed, there still remains the substantial question of how terrestrial rights such as those sought by DISH should be allocated. As CTIA and others have explained, a “one-off”

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<sup>13</sup> Consolidated Opposition to Petitions to Deny and Response to Comments, IB Docket Nos. 11-149 and 11-150, at 14 (Oct. 27, 2011) (“Consolidated Opposition”).

<sup>14</sup> Specifically, several parties argued that if the 2 GHz MSS spectrum is to be used for terrestrial uplink operations, the H Block would likely need to be converted to a guard band. Comments of Ericsson, ET Docket No. 10-142, at 9 (July 8, 2011) (“Ericsson 2 GHz Comments”); Comments of the Telecommunications Industry Association, ET Docket No. 10-142, at 5 (July 8, 2011) (“TIA 2 GHz Comments”); Comments of T-Mobile USA, Inc., ET Docket No. 10-142, at 11 (July 8, 2011) (“T-Mobile 2 GHz Comments”).

<sup>15</sup> For example, in the Commission’s 2 GHz proceeding both AT&T and Verizon Wireless highlighted the possibility of pairing the 1780-1800 MHz band with the 2180-2200 MHz portion of the 2 GHz MSS band. AT&T 2 GHz Comments at 6; Comments of Verizon Wireless, ET Docket No. 10-142, at 5 (July 8, 2011) (“Verizon Wireless 2 GHz Comments”).

waiver approach, as suggested by DISH, is not the appropriate procedural vehicle to allocate the substantial new terrestrial rights that DISH seeks, or to pre-decide how the 2 GHz band will be allocated.<sup>16</sup>

In its opening Comments, CTIA noted that when the Commission initially adopted its ATC rules, 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.<sup>17</sup> When the Commission reached its conclusion that ATC operations would not constitute unjust enrichment to MSS operators, it based this finding on the fact that "[w]e . . . do not believe that MSS, even with ATC, will be directly competitive with the terrestrial services offered by CMRS carriers."<sup>18</sup> Yet this is the very result DISH seeks, with DISH stating that grant of its applications "will put DISH on sure footing to begin to compete aggressively with entrenched nationwide wireless providers."<sup>19</sup>

In its Opposition, DISH argues that because it participated in a bidding process to acquire equity in DBSD and assets from TerreStar, its application is akin to a secondary market transaction and does not constitute a windfall.<sup>20</sup> That would be true if DISH sought to use this 2

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<sup>16</sup> See, e.g., T-Mobile Comments at 4-5.

<sup>17</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, at ¶ 224 (2003) ("*MSS Flexibility Report and Order*").

<sup>18</sup> *Id.* at ¶ 229.

<sup>19</sup> Consolidated Opposition at 2. See also *id.* at 33 ("DISH's plans to deploy a technically integrated advanced MSS/ATC system employing the latest in satellite and terrestrial technologies and using the full 40 MHz of S-Band spectrum will introduce a much needed, national competitor for mobile broadband."); *id.* at 40 ("DISH seeks to compete with AT&T and Verizon, not support them.").

<sup>20</sup> Consolidated Opposition at 28-29.

GHz MSS spectrum according to the FCC's rules. However, the instant proceeding demonstrates that this spectrum cannot be used for widespread terrestrial operations without grant of the rule waivers that DISH seeks. What DISH has proposed is essentially to convert the 2 GHz MSS allocation from a satellite band with permitted ancillary terrestrial operations to one where terrestrial-only service is offered and terrestrial base stations and handsets will be ubiquitous. This would considerably increase the value of the underlying spectrum and is clearly not consistent with the value placed on the spectrum during the bankruptcy process where usage was limited to satellite service.<sup>21</sup>

As T-Mobile noted in its Comments, the National Broadband Plan identified numerous issues implicated by a future conversion of the 2 GHz MSS band to terrestrial use, including “the potential use of Congressionally-authorized incentive auctions and appropriate consideration of the step-up value of the spectrum when used for terrestrial wireless purposes.”<sup>22</sup> CTIA agrees with T-Mobile that these are important issues that merit careful review by the Commission and that “[g]ranted the waiver requests would unwisely bypass a comprehensive consideration of . . . these important issues.”<sup>23</sup>

CTIA notes that incentive auctions have received widespread support in previous Commission proceedings,<sup>24</sup> and the record in this proceeding demonstrates the continued support

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<sup>21</sup> While DISH argues that it took into account the possibility of future flexibility for the spectrum during the bankruptcy process, certainly other parties were not factoring that into the process. Moreover, 40 MHz of nationwide, terrestrial broadband spectrum would not be valued at \$2.8 billion. When looking at past valuations for such spectrum assets, a valuation of 3 to 4 times this would be more realistic if terrestrial rights were guaranteed.

<sup>22</sup> T-Mobile Comments at 4. *See also* Federal Communications Commission, *Connecting America: The National Broadband Plan* at 88 (2010).

<sup>23</sup> T-Mobile Comments at 4.

<sup>24</sup> *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

for incentive auctions as a means for allocating these rights.<sup>25</sup> CTIA has also supported 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.

DISH suggests that incentive auctions are not relevant to this proceeding because the Commission receiving incentive auction authority and grant of DISH's applications are not mutually exclusive events.<sup>26</sup> While DISH is correct to the extent that the instant application may not serve as a bar to incentive auctions as a general matter, it is equally true that grant of the requested waivers likely would preclude re-allocation of the substantial new terrestrial rights sought by DISH with respect to the 2 GHz MSS spectrum.

Indeed, the Commission has found in the past that new rights should be considered a major modification to a spectrum license, and therefore subject to competitive bidding. For example, when the Commission adopted rules facilitating the provision of broadband air-ground telecommunications service, it concluded that incumbent licensee Verizon Airfone was not solely entitled to increased flexibility or additional spectrum and that it should permit competing applications for broadband air-ground licenses.<sup>27</sup> The facts in this case are very similar – an

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GHz Comments at 2; T-Mobile 2 GHz Comments at 11-12; TIA 2 GHz Comments at 6-7; Verizon Wireless 2 GHz Comments at 2.

<sup>25</sup> See MetroPCS Petition at 11; T-Mobile Comments at 4.

<sup>26</sup> Consolidated Opposition at 18.

<sup>27</sup> *Amendment of Part 22 of the Commission's Rules To Benefit the Consumers of Air-Ground Telecommunications Services*, Report and Order and Notice of Proposed Rulemaking, CITE, at ¶ 74 (2005) (“Exclusive use of the air-ground band would confer fundamentally greater rights and access to substantially more spectrum than is available to Verizon Airfone under its existing license and the current 800 MHz air-ground rules. . . . In view of the foregoing, we find that there is no justification for granting Verizon Airfone exclusive use of the 800 MHz air-ground band, which would provide it with a substantial windfall, and we conclude that permitting competing applications for licenses in this band would better serve the public interest.”).

incumbent licensee seeking additional rights without participation in competitive bidding, with significant potential for a windfall to the existing licensee. Whether the Commission determines that such additional rights should be provided under its current auction authority, under incentive auctions, or through other mechanisms that take into account the step-up value associated with increased flexibility, CTIA believes that the Commission should consider these issues in a rule making proceeding.

#### **IV. THE COMMISSION SHOULD ESTABLISH TECHNICAL STANDARDS NEEDED TO PROTECT INCUMBENT OPERATIONS FROM THE DISH WAIVER PROPOSALS.**

In recent Commission proceedings, numerous parties have noted that the proximity of terrestrial uplink operations in the MSS band to downlink operations in the nearby PCS bands raises the potential for harmful interference. CTIA believes that the Commission should evaluate the technical issues raised by the proximity of these bands in connection with DISH's proposed technical parameters and resolve any interference issues prior to taking action on DISH's application.

As DISH noted in its Opposition, the 3<sup>rd</sup> Generation Partnership Project ("3GPP") recently completed standards for LTE deployment in the 2 GHz MSS band.<sup>28</sup> CTIA's members play an active role in the development of technical standards and were engaged in the 3GPP effort. While CTIA supports the efforts of industry-based stakeholder groups, it notes that the Commission nonetheless has an obligation to ensure that new operations will not cause harmful interference to existing licensees.<sup>29</sup> As the 3GPP standards were only recently adopted, not all affected parties have had the opportunity to fully evaluate these new standards. Moreover,

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<sup>28</sup> Consolidated Opposition at 19-20.

<sup>29</sup> 47 U.S.C. § 303(f) (stating that the Commission shall "[m]ake such regulations not inconsistent with law as it may deem necessary to prevent interference between stations").

standards alone are not sufficient to ensure that affected licensees are fully protected from interference – only the adoption of Commission technical rules would allow the Commission to determine that its interference protection role – as required by statute – is guaranteed.

The Commission must evaluate the 3GPP technical standards in connection with the technical waivers sought by DISH to ensure that incumbent licensees are not harmed by DISH's proposed operations. Indeed, commenters in the 2 GHz proceeding cited an interference review as a necessary prerequisite to the Commission permitting terrestrial operations in the 2 GHz MSS band.<sup>30</sup> Not only will resolving these issues prior to acting on the applications be consistent with the Commission's statutory obligation to protect incumbent licensees from interference, but it will also afford DISH the certainty that was absent in the recent LightSquared proceeding, where the Commission deferred consideration of interference concerns raised by commenters.

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<sup>30</sup> See, e.g., CTIA Comments at 13-15.

## V. CONCLUSION

Rather than grant DISH's requested waivers and foreclose consideration of important issues such as comprehensive 2 GHz band planning and equitable means of allocating terrestrial rights to MSS spectrum, CTIA urges the Commission to initiate a proceeding of general applicability that can most properly address these important issues.

Respectfully submitted,

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November 3, 2011

## CERTIFICATE OF SERVICE

I, Christy Hammond, do hereby certify that on this 3<sup>rd</sup> day of November, 2011, I caused copies of the foregoing “Reply Comments of CTIA – The Wireless Association®” to be served on the following:

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