

**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 No. 11-149

**REPLY COMMENTS  
OF THE  
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION  
(CCIA)**

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## **EXECUTIVE SUMMARY**

DISH Network seeks to acquire New DBSD Satellite Services G.P. and TerreStar License Inc. and has requested Rule Waivers and Modified Ancillary Terrestrial Component Authority so that it can launch a nationwide, satellite-terrestrial mobile broadband network using 40 MHz of the 2 GHz MSS spectrum. Once operational, DISH's network has the potential to create much needed competition in the highly concentrated wireless broadband market. Additionally, DISH's network will efficiently use underutilized spectrum to expand the amount of spectrum available for mobile broadband, helping the Commission meet one of the goals of the *National Broadband Plan*. CCIA and other parties support DISH's efforts and ask the Commission to move without delay to grant the Applicants' Request.

The Commission should not delay its grant of the Applicants' Request. Delay by the Commission will only postpone, and potentially foreclose DISH's entry into the wireless broadband market and disserve the public interest by preventing meaningful competition and its potential to benefit consumers through lower prices and greater innovation. The Commission has the authority to grant the Applicants' Request and should promptly do so.

Granting the Applicants' Request so that DISH can launch its satellite-terrestrial mobile broadband network will serve the public interest and advance the Commission's goals in many regards. Capitulation to incumbent requests for delay will only further stifle competition in the wireless broadband market and waste valuable spectrum

resources. For these reasons CCIA urges the Commission to approve the Applicants' Request so that DISH may deploy its nationwide network as soon as possible.

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The Computer & Communications Industry Association (“CCIA”) files this Reply to Comments and the Commission’s Public Notice<sup>1</sup> regarding the Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority (“ATC”) (“Request”) of New DBSD Satellite Services G.P. (“DBSD”) and TerreStar Licensee Inc. (“TerreStar”) (collectively with DISH Network Corporation as the “Applicants”) filed on August 22, 2011.<sup>2</sup> CCIA requests that the Federal Communications Commission (“FCC” or “Commission”) approve the Applicants’ Request. The Commission’s grant of the Request will allow DISH Network Corporation (“DISH”), which has acquired the assets of DBSD and TerreStar and applied for the transfer of licenses held by DBSD and TerreStar,<sup>3</sup> to deploy a hybrid satellite and terrestrial mobile network using 40 MHz of 2 GHz Mobile-Satellite-Service (“MSS”) spectrum. DISH’s network will provide Americans with increased choice and competition for mobile broadband services and efficiently use currently underutilized wireless spectrum. The Commission should not delay granting the Applicants’ Request.

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<sup>1</sup> IB Docket No. 11-149, *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*, DA 11-1555 (Sept. 15, 2011).

<sup>2</sup> IB Docket No. 11-149, *Application of New DBSD Satellite Services G.P., Debtor-in-Possession, for Modification of Ancillary Terrestrial Component Authority* (Aug. 22, 2011); *Application of TerreStar License Inc., Debtor-in-Possession, for Modification of Ancillary Terrestrial Component Authority* (Aug. 22, 2011).

<sup>3</sup> IB Docket No. 11-150, *Amendment to Application for Transfer of Control of DBSD North America, Inc., Debtor-in-Possession; New DBSD Satellite Services G.P., Debtor-in-Possession; and Pendrell Corporation, and DISH Network Corporation* (Aug. 22, 2011); *Consolidated Application of TerreStar Networks Inc., Debtor-in-Possession; and TerreStar License Inc., Debtor-in-Possession, and DISH Network Corporation and Gamma Acquisition L.L.C. for Transfer of Authorizations* (Aug. 22, 2011) (“Consolidated Application”).

## **I. THE COMMISSION SHOULD GRANT THE APPLICANTS' REQUEST FOR RULE WAIVERS AND MODIFIED ANCILLARY TERRESTRIAL COMPONENT AUTHORITY**

CCIA joins the U.S. GPS Industry Council and Globalstar, Inc. in supporting the Applicants' Request.<sup>4</sup> The Commission should grant the Applicants' Request subject to the Applicants' compliance with the Commission's rules on reimbursement obligations under the *Emerging Technologies Proceeding*.<sup>5</sup> Approval of the Applicants' Request, along with the transfer of spectrum and satellite resources from DBSD and TerreStar to DISH, will allow DISH to utilize the 2 GHz MSS spectrum band and deploy a nationwide mobile broadband network.<sup>6</sup>

## **II. GRANTING THE APPLICANTS' REQUEST WILL RESULT IN INCREASED COMPETITION IN THE WIRELESS BROADBAND MARKET**

Should the Commission grant the Applicants' Request, DISH will move forward with its plans to launch an MSS/ATC network using the full 40 MHz of S-band spectrum and state-of-the-art satellite and terrestrial technologies. DISH will offer its broadband

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<sup>4</sup> See IB Docket No. 11-149, Comments of Globalstar, Inc. at 1 (Oct. 17, 2011); Comments of the U.S. GPS Industry Council at 2-3 (Oct. 17, 2011).

<sup>5</sup> See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd. 6886 (1992); Second Report and Order, 8 FCC Rcd. 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd. 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd. 7797 (1994).

<sup>6</sup> IB Docket Nos. 11-149, 11-150, Consolidated Opposition of New DBSD Satellite Services G.P., Debtor-in-Possession; and TerreStar License Inc., Debtor-in-Possession; and DISH Network Corporation to Petitions to Deny and Response to Comments at 2 (Oct. 27, 2011) ("Consolidated Opposition and Response").

services over its single, integrated satellite-terrestrial network for all satellite and terrestrial traffic.<sup>7</sup> DISH's entry into the marketplace would significantly advance the Commission's goal of promoting competition in the wireless broadband market.<sup>8</sup>

**A. The Commission Has Declined to Classify the Wireless Market as Competitive**

The Commission declined to conclude that the market for wireless service is competitive in its 2010 and 2011 annual reports on competition in the wireless industry.<sup>9</sup> The Commission uses the Herfindahl-Hirschman Index ("HHI") to measure market concentration in its analysis of wireless competition.<sup>10</sup> In its Horizontal Merger Guidelines, the Department of Justice ("DOJ") defines a "highly concentrated market" as having a HHI of greater than 2500,<sup>11</sup> and in its *Fifteenth Report* on wireless competition the Commission found that the weighted average HHI for the wireless market at the end

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<sup>7</sup> Consolidated Application at 4.

<sup>8</sup> See *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81, 25 FCC Rcd. 11407 ¶ 1 (May 20, 2010) ("*Fourteenth Report*") ("[p]romoting competition is a fundamental goal of the Commission's policymaking.").

<sup>9</sup> See *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, WT Docket No. 10-133, Fifteenth Report, FCC 11-103 5 ¶ 2, 28 ¶ 15 (June 27, 2011) ("*Fifteenth Report*"); *Fourteenth Report* at 25 FCC Rcd. 11429 ¶ 6, 11623 ¶ 368.

<sup>10</sup> *Fifteenth Report* at 16.

<sup>11</sup> U.S. Dept. of Justice, Horizontal Merger Guidelines § 5.3 (Aug. 19, 2010).

of 2009 was 2811.<sup>12</sup> Thus, the Commission's *Fifteenth Report* confirms that the wireless market is "highly concentrated" under the DOJ's Horizontal Merger Guidelines.

**B. DISH's Planned Hybrid Satellite-Terrestrial Network Will Create Additional Competition in the Wireless Broadband Market**

If the Applicants' Request is granted, DISH will commence deployment of its hybrid satellite-terrestrial network. With the 2 GHz MSS spectrum acquired from DBSD and TerreStar, DISH will be able to provide consumers with wireless broadband services. DISH's entry would offer a competitive alternative in the highly concentrated wireless broadband market.

DISH Network is a nationwide Multichannel Video Programming Distributor business, and thus has the resources and experience needed to deploy an advanced MSS/ATC network in the S-Band with the capability of providing American consumers with additional choices for mobile broadband services. Additionally, DISH is prepared to utilize its "nationwide 'bricks-and-mortar' network of sales, support, installation, customer service, and maintenance infrastructure to facilitate deployment of a new service."<sup>13</sup>

As the Commission has declined to classify the wireless industry as competitive in its two most recent annual reports on wireless competition, and the Commission's findings indicate that the wireless market is "highly concentrated" under DOJ's Horizontal Merger Guidelines, granting the Request to facilitate DISH's entry into the

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<sup>12</sup> *Fifteenth Report* at 16.

<sup>13</sup> Consolidated Application at 4.

wireless broadband market will help advance the Commission's goal of promoting wireless competition.

As DISH notes, even its potential entry into the wireless marketplace may have two positive consequences. First, its potential entry may serve to drive down the prices of existing wireless broadband access providers. Second, incumbent providers may enhance their services ahead of DISH's entry into the market in an effort to retain market share.<sup>14</sup> Thus, approval of the Applicants' Request and the likely entry of DISH as a competitive provider of wireless broadband access will benefit consumers through lower prices and greater innovation by both DISH and incumbent providers.

### **III. GRANTING THE APPLICANTS' REQUEST WILL INCREASE THE AMOUNT OF SPECTRUM AVAILABLE FOR WIRELESS BROADBAND AND PROMOTE THE EFFICIENT USE OF WIRELESS SPECTRUM**

Granting the Applicants' Request will enable DISH to deploy its hybrid satellite-terrestrial mobile broadband network in the 2 GHz MSS spectrum band. Allowing DISH to launch its network will help the Commission achieve its goals of promoting the efficient use of wireless spectrum resources, increasing the amount of spectrum available for wireless broadband use, and addressing the nation's mobile broadband spectrum shortage.

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<sup>14</sup> Consolidated Opposition and Response at 33-34.

**A. DISH’s Plan Will Utilize Additional Spectrum for Wireless Broadband and Help Achieve the Goals of the *National Broadband Plan***

The *National Broadband Plan* is explicit that additional spectrum for wireless broadband is necessary in order to capitalize on the potential of wireless broadband as a transformative platform.<sup>15</sup> Furthermore, the *Plan* warned that wireless broadband growth would be inhibited should additional spectrum not be made available.<sup>16</sup> As a solution, the *NBP* calls for the Commission to make 500 MHz of spectrum available for wireless broadband use over the next decade.<sup>17</sup> Specifically, the *Plan* calls for making 90 MHz of spectrum currently allocated as MSS spectrum available for terrestrial deployment.<sup>18</sup>

Commenters in this proceeding have also expressed the need for additional spectrum to be allocated for wireless broadband, as well as the suitability of the 2 GHz band to meet the nation’s spectrum needs.<sup>19</sup> DISH’s plan puts this consensus position into action by employing 40 MHz of the 2 GHz S-Band spectrum for wireless broadband.

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<sup>15</sup> FCC, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 75 (2009) (“NATIONAL BROADBAND PLAN”), *available at* <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

<sup>16</sup> *Id.* at 77.

<sup>17</sup> *Id.* at 84.

<sup>18</sup> *Id.* at 87.

<sup>19</sup> *See* IB Docket Nos. 11-149, 11-150, Comments of CTIA – The Wireless Association at 9 (Oct. 17, 2011) (“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.”); 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 at 12 (Oct. 17, 2011) (“the 40 MHz of

DISH's plan will advance the goals of the *National Broadband Plan*. DISH's plan will put currently underutilized wireless spectrum to use by deploying an integrated MSS/ATC network, using the latest in satellite and terrestrial technologies, on the full 40 MHz of S-Band spectrum. Thus, the Applicants' Request should be granted so that DISH may move forward with its plan to use 40 MHz of S-Band spectrum to deploy its wireless broadband network.

**B. DISH's Plan Will Facilitate More Efficient Use of Wireless Spectrum**

DISH's planned deployment presents the most efficient use of the 2 GHz S-Band spectrum to provide wireless broadband services. If the Applicants' Request is granted, DISH plans to consolidate the 2 GHz S-Band spectrum assigned to DBSD and TerreStar into a combined 40 MHz of spectrum to provide nationwide wireless broadband services. The combined 40 MHz of spectrum will allow for the efficient deployment of next-generation MSS/ATC services and support a nationwide wireless broadband service.<sup>20</sup>

A bifurcated 2 GHz band, as it currently exists, does not allow DISH to meet the bandwidth requirements that today's wireless applications require. Thus, integration of the full 40 MHz of the 2 GHz S-Band is needed so that DISH can effectively compete in the wireless broadband access market.<sup>21</sup> Therefore, granting the Applicants' Request and

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2 GHz MSS spectrum is one of the only viable near-term options remaining of the 300 MHz of spectrum identified in the NBP as being necessary to satisfy mobile wireless demand over the next five years.” (“MetroPCS Petition to Deny”).

<sup>20</sup> Consolidated Opposition and Response at 27.

<sup>21</sup> *Id.*

allowing DISH to launch its network on the combined 40 MHz of the 2 GHz S-Band will facilitate the most efficient use of the 2 GHz spectrum band.

**IV. DELAYING THE GRANT OF DBSD AND TERRESTAR’S REQUEST IS UNNECESSARY AND WILL POSTPONE THE BENEFITS OF DISH’S ENTRY INTO THE WIRELESS BROADBAND MARKET**

The Commission should not delay granting the Applicants’ Request, as CTIA suggests.<sup>22</sup> Delay in granting the Request is unnecessary and will postpone DISH’s entry into the wireless broadband market and frustrate the Commission’s goal of increasing wireless competition. Parties seeking to delay DISH’s entry into the wireless broadband market hope to avoid additional competition from DISH’s nationwide network.

**A. Delaying the Grant the Applicants’ Request in Order for the Commission to Address 2 GHz Spectrum and ATC Rules Through a Rulemaking is Unnecessary**

Delaying the grant of Applicants’ Request in order to address issues in a notice and comment rulemaking on the future of the 2 GHz MSS spectrum bands, as some Comments suggest, is an unnecessary detour from the immediate public interest.

In its Comments, CTIA claims that granting the Applicants’ Request would “have a widespread impact on both the Commission’s ATC regime and the deployment of broadband networks at 2 GHz.”<sup>23</sup> CTIA recommends that the issues in the Applicants’

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<sup>22</sup> See Comments of CTIA – The Wireless Association at 4-13 (urging the Commission address the Applicants’ Request through a notice and comment rulemaking rather than through its authority to grant the Applicants’ requested waivers).

<sup>23</sup> *Id.* at 4.

Request be addressed in a notice and comment rulemaking, rather than through the grant of a waiver.<sup>24</sup>

The Commission should disregard recommendations that the Applicants' Request be dealt with through a general rulemaking process. As DISH correctly points out, the MSS and 2 GHz proceedings<sup>25</sup> cited by CTIA involve many complex issues that will take years to resolve.<sup>26</sup> The ongoing MSS and 2 GHz proceedings cited by CTIA involve numerous, wide-ranging issues regarding the 2 GHz, Big LEO, and L-Bands, as well as matters involving 2 GHz spectrum, AWS-3 spectrum, AWS-2 spectrum, and spectrum in the 1.7 GHz band. Further, both the MSS and 2 GHz proceedings are likely years away from resolution.<sup>27</sup> Thus, the Commission should disregard CTIA's recommendation that the Commission address the Applicants' Request through the rulemaking process and instead move quickly to grant the Request through the established waiver process.

Deferring the grant of the Applicants' Request, as CTIA proposes, is unnecessary and likely anticompetitive. The Commission need not delay acting on the Applicants' Request because the Commission has the authority to waive its MSS/ATC rules when

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<sup>24</sup> *Id* at 4-13.

<sup>25</sup> *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, *Notice of Proposed Rulemaking and Notice of Inquiry*, 25 FCC Rcd. 9481, 9492-94 ¶¶ 26-34 (2010); Spectrum Task Force Invites Technical Input on Approaches to Maximize Broadband Use of Fixed/Mobile Spectrum Allocations in the 2 GHz Range, Public Notice, 26 FCC Rcd. 7587 (2011).

<sup>26</sup> Consolidated Opposition and Response at 10.

<sup>27</sup> *Id.* at 13-16.

appropriate.<sup>28</sup> In prior instances the Commission has exercised this authority and granted waivers of various ATC rules to individual licensees.<sup>29</sup>

Thus, Commission authority and precedent shows that deferring the grant of the Applicants' Request until the completion of ongoing rulemaking proceedings is procedurally unnecessary. Further, postponing ruling on the Applicants' Request until the Commission completes a rulemaking proceeding would significantly delay, and potentially foreclose DISH's ability to enter the mobile broadband market.<sup>30</sup> Therefore, the Commission should move forward and promptly grant the Applicants' Request.

**B. Delaying the Grant of the Applicants' Request will Unnecessarily Postpone Additional Competition in the Wireless Broadband Market**

Granting the Applicants' Request so that it may deploy its mobile broadband network will serve the public interest. Delay in granting the Applicants' Request in order to undertake a lengthy notice and comment rulemaking process will disserve the public

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<sup>28</sup> See *SEC v. Chenery Corp.*, 332 U.S. 194, 202 (1947) (stating that an agency "must retain power to deal with ... problems on a case-to-case basis if the administrative process is to be effective"); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166-67 (D.C. Cir. 1990) (asserting that the FCC has the authority to waive its rules when doing so would not undermine the policy objective behind the rule and would better serve the public interest than strict compliance with the rule).

<sup>29</sup> 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); LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component, *Order and Authorization*, 26 FCC Rcd. 566 (2011).

<sup>30</sup> Consolidated Opposition and Response at 10 (citing MetroPCS Petition to Deny at 7) (leaving spectrum underused in order to proceed with rulemaking, as with the AWS-2 and AWS-3 spectrum, will delay full utilization of the spectrum for years).

interest by delaying additional competition in the wireless broadband market and postponing DISH's ability to best use underutilized spectrum.

As discussed above, the wireless market is highly concentrated. DISH's entry would spur competition, increase innovation, and lead to lower prices and greater choice for consumers. However, delaying DISH's entry into the wireless market in order to complete a rulemaking proceeding that could drag on indefinitely may foreclose DISH's ability to deploy its network.

As MetroPCS points out, the Commission has thus far fallen short of meeting the objectives of the *National Broadband Plan* with regards to increasing the flexible use of WCS spectrum, auctioning fallow spectrum in the AWS bands, re-allocating the 700 MHz D-Block, and re-allocating broadcast spectrum. Concurrently, the wireless industry has continued to consolidate.<sup>31</sup> "This makes it particularly important that the Commission ensure that this 40 MHz of MSS spectrum actually be used as soon as possible to inject needed competition into the wireless broadband industry."<sup>32</sup>

The Commission should not delay granting the Applicants' Request. Completing the ongoing rulemaking proceedings could take years and does not impact, nor should it delay, the Commission's authority or ability to grant the Applicants' Request. Further, failing to grant the Applicants' Request would disserve the public interest by delaying, if

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<sup>31</sup> MetroPCS Petition to Deny at 8-9.

<sup>32</sup> *Id.* at n. 25.

not foreclosing, DISH's competitive entry into the highly concentrated wireless broadband market. Delay is unnecessary and would disserve the public interest.

**C. DISH's Plan Will Not Create Harmful Interference**

DISH's plan does not create a risk of harmful interference to commercial mobile service operators. Although CTIA alleges that DISH's planned MSS/ATC network poses a risk of causing interference with Personal Communications Service ("PCS") operations,<sup>33</sup> these claims are unfounded.

As DISH points out, granting the Applicants' Request "will not implicate applicable interference limits, which remain intact; nor will it create a risk of harmful interference to commercial mobile service operators."<sup>34</sup> DISH's planned ATC operations will remain subject to and in compliance with the technical limits below 2000 MHz, which are designed to prevent harmful interference from ATC mobile transmitters to PCS mobile receivers. Further, the Applicants are not seeking any increase to the radiated power or out-of-band-emission limits for ATC mobile terminal transmissions and emissions below 2000 MHz.<sup>35</sup>

DISH's plan creates no risk of harmful interference with PCS operations and granting the Applicants' Request should not be delayed by such baseless claims.

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<sup>33</sup> Comments of CTIA – The Wireless Association at 13.

<sup>34</sup> Consolidated Opposition and Response at 19.

<sup>35</sup> *Id.*

#### IV. CONCLUSION

The Commission should move to grant the Applicants' Request this year. DISH's planned satellite-terrestrial wireless broadband network will spur much needed competition in a highly concentrated wireless broadband market and use underutilized spectrum to deliver broadband to consumers, helping the Commission achieve the goals of the *National Broadband Plan*.

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