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**VIA ELECTRONIC FILING**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: 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**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the rules of the Federal Communications Commission (“Commission”), AT&T Inc. (“AT&T”), on behalf of its subsidiaries, submits this written *ex parte* presentation in the docket listed above. AT&T welcomes efforts to expand the pool of available CMRS spectrum, including DISH Network Corporation’s (“Dish”) efforts to offer mobile broadband service in the 2 GHz band. Should the Commission grant Dish’s waiver request, it should ensure that this new CMRS spectrum is regulated in a consistent and competitively neutral manner relative to CMRS spectrum already licensed and deployed.<sup>1</sup> To this end, AT&T supports build out requirements for 2 GHz comparable to those imposed on LightSquared, which are consistent with performance obligations in other CMRS bands. Dish should not be able to defer those requirements by keying to the LTE Advanced standard. Likewise, Dish’s mobile broadband operations in the lower 700 MHz band should be subject to the interference rules applicable to other 700 MHz licenses. Finally, proposals for restrictions on the transfer and/or leasing of the 2 GHz spectrum should be rejected.

Dish asserts that one of the central public interest benefits of its proposed acquisition of 2 GHz MSS/ATC licensees New DBSD Satellite Service G.P., Debtor-in-Possession (“DBSD”) and TerreStar License, Inc., Debtor-in-Possession (“TerreStar”) is Dish’s competitive entry into the mobile broadband market.<sup>2</sup> However, to accomplish

<sup>1</sup> AT&T supported repurposing the 2 GHz band to CMRS use via rulemaking in its Reply, *see* Reply of AT&T, IB Docket No. 11-149, 1 (filed Nov. 3, 2011), but if the Commission elects to proceed by waiver it should do so consistent with the recommendations made herein.

<sup>2</sup> *See* ICO Global Communications (Holdings) Limited; DBSD North America, Inc. Debtor-in-Possession; New DBSD Satellite Services G.P. Debtor-in-Possession, Transferors, and DISH Network Corporation, Transferee, Consolidated Application for Authority to Transfer Control, Narrative at 12-16, IBFS File Nos. SAT-T/C-20110408-00071, SES-T/C-20110408-00424 and -00425 (filed Apr. 8, 2011) (“DBSD Application”); TerreStar Networks Inc., Debtor-in-Possession; and TerreStar License Inc., Debtor-in-Possession, Transferors, and DISH Network Corporation and Gamma Acquisition L.L.C.,

this new market entry, Dish requests that the Commission grant it substantial relief from the most significant Ancillary Terrestrial Component (“ATC”) gating criteria. AT&T agrees that the repurposing of this spectrum for mobile broadband use will yield significant public benefits. However, it is also true that the waiver sought by Dish will confer a substantial windfall on Dish. Therefore, it is critical that any waiver be conditioned on build out requirements that provide appropriate assurance that a robust wireless broadband service will be promptly deployed to a substantial portion of the population.

As noted by MetroPCS in its Petition, there was no firm commitment to any terrestrial build out schedule in Dish’s public interest statement or in its Opposition, “[r]ather, DISH makes a number of vague assertions about the network it *may* consider building in the 2 GHz MSS band.”<sup>3</sup> In light of the ongoing explosion in mobile broadband use and the shortage of spectrum suitable for mobile broadband expected to become available in the near-term, it is essential that new spectrum resources be put to use promptly. Thus, to ensure that the public interest is served by the requested waivers, the Commission should adopt build out requirements consistent with those adopted in the *Harbinger/SkyTerra* order, in which the combined company committed to providing terrestrial coverage to at least 100 million people within approximately 33 months (2 years 9 months), 145 million people within 45 months (3 years 9 months), and 260 million people within 69 months (5 years 9 months).<sup>4</sup>

Despite Dish’s arguments to the contrary, the *Harbinger/SkyTerra* build out requirements are the most relevant precedent in this case. Just as in that case, Dish proposes to create an integrated nationwide terrestrial and satellite broadband system from the ground up. Contrary to Dish’s assertion that the combination of two MSS systems is more complex than the task before LightSquared,<sup>5</sup> AT&T notes that mobile broadband operations in the L Band are possible only by virtue of LightSquared’s spectrum sharing agreement with Inmarsat, which involves exchanging and aggregating various narrowband spectrum channels. Moreover, while it is conceivable that the fact that LightSquared proposes to operate on a wholesale model may ease the challenges of producing consumer devices, this distinction between the two would-be facilities-based providers has no relevance to the pace or complexity of their infrastructure deployment.

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Transferees, Consolidated Application for Transfer of Authorizations, Narrative at 23-30, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279 (filed Aug. 22, 2011) (“TerreStar Application”).

<sup>3</sup> See 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 Application, 14, IB Docket No. 11-150 (filed Oct. 17, 2011).

<sup>4</sup> See 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, 3098 (2010) (“*Harbinger/SkyTerra Order*”).

<sup>5</sup> Opposition at 37.

In a recent *ex parte* notice, Dish notes that it “presented [to Commission staff] a detailed proposal concerning . . . a revised buildout schedule keyed to commercial availability of the LTE Advanced standard.”<sup>6</sup> While the *ex parte* notice provides no specifics about Dish’s “detailed proposal,”<sup>7</sup> to the extent that the proposal contemplates a longer deployment schedule than the one set in the *Harbinger/SkyTerra Order*, it should be rejected. LightSquared’s predecessors were in a similar situation when they committed to a deployment schedule, as LTE standardization and technology development work for LightSquared’s L-Band MSS spectrum still needed to be done. Because the LightSquared and Dish deployments are indistinguishable in this respect, the Commission should impose similar build out requirements.

In addition to introducing mobile broadband to the 2 GHz band, Dish’s proposal raises the issue of Dish’s use of the 700 MHz E Block licenses held by its wholly-owned subsidiary, Manifest Wireless, LLC (“Manifest”). In the applications, Dish speculates about combining the 700 MHz E Block spectrum with the DBSD and TerreStar spectrum to “enhance the effectiveness and competitiveness of any mobile broadband services.”<sup>8</sup> These plans are underscored by Manifest’s recent 700 MHz Interim Performance Status Report, which discusses ongoing examination of LTE technologies for this spectrum.<sup>9</sup> Dish’s proposed integration of the 2 GHz MSS spectrum with its 700 MHz band holdings raises interference concerns that the Commission should address in the course of this waiver proceeding.

In the recent *Order* approving AT&T’s acquisition of Qualcomm’s Lower 700 MHz licenses, the Commission determined that downlink use of the 700 MHz D and E Blocks for broadband services has the potential to cause harmful interference to the

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<sup>6</sup> See Letter from Alison A. Minea, Corporate Counsel, Dish Network, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket Nos. 11-149, 11-150 (filed Jan. 20 2012).

<sup>7</sup> Because Dish’s *ex parte* notice offers no insight into the deployment proposal that was discussed, it appears to be in violation of Commission’s revised *ex parte* rules. See Amendment of the Commission’s Ex Parte Rules and Other Procedural Rules, GC Docket No. 10-43, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 4517, ¶ 35 (2011) (“Summaries must be sufficiently detailed that they would inform a person who did not attend the presentation of the facts that were discussed, the arguments made, and the support offered for those arguments.”); see also 47 C.F.R. § 1.1206(b)(1) (*Ex parte* notices “must contain a summary of the substance of the *ex parte* presentation and not merely a listing of the subjects discussed.”) Dish’s *ex parte* notes that a “buildout schedule” and “timelines” were discussed without ever disclosing the proposed schedule, in direct contradiction to the Commission’s rules.

<sup>8</sup> See DBSD Application at 15-16; see also TerreStar Application at n.52 (E Block spectrum could be used to “support a mobile broadband network”).

<sup>9</sup> See, e.g., Call Sign WQJY911, 700 MHz Interim Performance Status Report of Manifest Wireless L.L.C., at 6 (“Dish 700 MHz Status Report”).

Lower 700 MHz A, B, and C Blocks.<sup>10</sup> To address these concerns, the *Qualcomm Order* imposed three restrictions on AT&T's use of the 700 MHz D and E Blocks.<sup>11</sup>

- First, the Commission required that AT&T operate on the E Block spectrum under the same power limits and antenna height restrictions that apply to Lower 700 MHz A and B Block licensees, as set forth in Section 27.50(c) of its rules.
- Second, the Commission required that AT&T use the spectrum only for downlink transmissions so as to eliminate the risk of mobile-to-mobile interference to other Lower 700 MHz devices.
- Finally, to mitigate any potential interference that could be caused to Lower 700 MHz A, B, and C Block licensees, AT&T is required to (1) coordinate with A, B, or C Block licensees to mitigate potential interference; (2) mitigate interference to A, B, or C Block operations within 30 days after receiving written notice from the licensee; and (3) ensure that D/E Block transmissions in areas where another licensee holds the A, B, or C Block license are filtered at least to the extent that D/E Block transmissions are filtered in markets where AT&T holds the A, B, or C Block license.

The interference concerns surrounding Dish's future use of the Lower 700 MHz E Block spectrum are essentially identical to those implicated by AT&T's use of the same spectrum. Without proper protections, Dish's use of the E Block could interfere with Lower 700 MHz A, B, and C Block licensees to the same extent as AT&T's. In addition, Dish's use of the E Block for mobile broadband may cause harmful interference to AT&T's planned use of the 700 MHz D and E Block licenses for supplemental downlink mobile broadband services, which the Commission expressly determined to be in the public interest.<sup>12</sup>

The Commission's review of Dish's requested waivers intended to facilitate the launch of new mobile broadband services gives the agency an opportunity to address, and prevent, the potential interference resulting from Dish's use of the Lower 700 MHz E Block in its broadband plans. To mitigate these interference concerns, Dish should be subject to substantially the same interference protections imposed on AT&T in the *Qualcomm Order*. Specifically, Dish's use of the Lower 700 MHz E Block should be subject to the following restrictions:

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<sup>10</sup> See Application of AT&T Inc. and Qualcomm Incorporated for Consent to Assign Licenses and Authorizations, WT Docket No. 11-18, *Order*, FCC 11-188, ¶¶ 59-68 (rel. Dec. 22, 2011) ("*Qualcomm Order*").

<sup>11</sup> *Id.*, ¶ 61.

<sup>12</sup> *Id.*, ¶ 82.

- First, Dish’s use of the Lower 700 MHz E Block operate under the same power limits and antenna height restrictions that apply to Lower 700 MHz A and B Block licensees, as set forth in Section 27.50(c) of the Commission rules, and to AT&T’s Lower 700 MHz D and E block operations under the *Qualcomm Order*.
- Second, Dish should be permitted to use the spectrum only for downlink transmissions so as to eliminate the risk of mobile-to-mobile interference to other Lower 700 MHz devices.
- Third, to mitigate any potential interference that could be caused to Lower 700 MHz A, B, C, D, and other E Block licensees, Dish should be required to (1) coordinate with A, B, C, D, and other E Block licensees to mitigate potential interference; and (2) mitigate interference to A, B, C, D, or other E Block operations within 30 days after receiving written notice from the licensee.<sup>13</sup>

The Commission should take steps to address this potential interference now, in the context of Dish’s waiver request, in order to prevent and resolve any issues that might otherwise arise from the use of the E Block spectrum for higher power, broadcast-style uses. Because Dish is the only holder of E Block spectrum not already subject to these interference protections, the Commission has the option of resolving these concerns here, without the need for a rulemaking. Adopting these protections will promote efficiency by eliminating the need for each operator to take extraordinary interference mitigation measures. Additionally, creating uniform rules for all Lower 700 MHz operators will facilitate interoperability across the band, which the Commission has indicated “may bring substantial public interest benefits, such as encouraging the affordability and availability of 4G equipment, enhancing competition by facilitating consumer choice, and facilitating the widespread deployment of broadband services and competition, including access to broadband in rural and underserved areas,” as well as creating “greater roaming opportunities between 700 MHz licensees.”<sup>14</sup>

Imposing these restrictions on Dish’s use of the Lower 700 MHz E Block will not prejudice the company, because it has not yet begun to make significant use of this spectrum. In Manifest’s recently filed Interim Status Report, it indicated that it has taken no substantial steps with respect to deployment in 156 of its 168 license areas.<sup>15</sup> In the remaining 12 license areas, Manifest has entered into spectrum manager leasing arrangements—set to expire May 31, 2012—with a provider of specialty services

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<sup>13</sup> The filtering condition placed on AT&T in the *Qualcomm Order* would have no relevance as applied to Dish, because it does not hold other 700 MHz spectrum.

<sup>14</sup> *Qualcomm Order*, ¶ 70.

<sup>15</sup> Dish 700 MHz Status Report, Attachment A.

confined to individual venues.<sup>16</sup> Rather than burdening Dish, these interference protections are complementary to its stated broadband deployment plans.

Finally, the Commission should reject calls to impose on Dish the same unlawful and anticompetitive spectrum use restrictions as were adopted in the *Harbinger/SkyTerra Order*. As AT&T and others have explained, those restrictions were procedurally improper when they were adopted in the *Harbinger/SkyTerra Order*, and there is no basis for the adoption of similar restrictions in the current proceeding.<sup>17</sup>

There is no record in this proceeding that could support the imposition of the discriminatory spectrum access restrictions imposed in the *Harbinger/SkyTerra Order*.<sup>18</sup> Moreover, no policy justification for such conditions exists. Imposing restrictions on commercial activities with specific parties in this instance would be anticompetitive, discriminatory, and the height of arbitrary and capricious administrative action. The Commission would have the opportunity to review any license transfer involving the 2 GHz licenses at the time a transaction is proposed. Likewise, because the Commission has extended the secondary markets rules to Mobile Satellite Service spectrum,<sup>19</sup> all leases of 2 GHz spectrum will be subject to Commission review. Accordingly, there is no reason to adopt prohibitions on transactions involving specific parties.

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If granted, Dish's waiver requests could make available a substantial new portion of CMRS spectrum. In bringing this spectrum to market, however, the Commission should ensure that it is treated consistently with other comparable spectrum. To this end, AT&T supports earlier calls in the record of this proceeding for build out requirements comparable to those imposed on LightSquared, which are consistent with performance obligations in other CMRS bands. Additionally, Dish's proposed integration of the 2 GHz MSS licenses with its existing spectrum holdings, while opening new spectrum to mobile broadband, raises significant concerns regarding the potential for harmful

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<sup>16</sup> See *id.*, 2-3.

<sup>17</sup> See Reply of AT&T, IB Docket No. 11-149, 6-7 (filed Nov. 3, 2011); see also Letter from Tamara Preiss, Vice President, Federal Regulatory Affairs, Verizon to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 11-149 (filed Dec. 22, 2011); Opposition of Verizon Wireless, IB Docket No. 11-149 (filed Oct. 27, 2011); Petition for Reconsideration of AT&T Inc., IB Docket No. 08-184 (filed Mar. 31, 2010).

<sup>18</sup> Although Sprint Nextel raised the issue in its Petition to Condition Approval, this Petition was subsequently withdrawn and should not be considered part of the record in this proceeding. Additionally, while the Public Interest Spectrum Coalition discussed similar restrictions in an oral *ex parte* presentation, it provided no evidence justifying these restrictions or even linking them to any specific potential harm to the public interest. See Letter from Michael Calabrese, Director, Wireless Future Project, Open Technology Initiative, New America Foundation, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket Nos. 11-149, 11-150 (filed Jan. 23, 2012).

<sup>19</sup> See Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, ET Docket No. 10-142, *Report and Order*, 26 FCC Rcd 5710 (2011).

interference to other Lower 700 MHz Band licensees. To mitigate these concerns, the Commission should adopt appropriate interference protections, based upon its recent actions in the *Qualcomm Order*. Finally, there is no procedural, evidentiary, or policy basis for the adoption of anticompetitive and discriminatory conditions on the transfer or lease of the 2 GHz spectrum; proposals to that effect are unlawful and should be rejected.

Sincerely,

A handwritten signature in black ink, appearing to be 'Joan Marsh', with a long horizontal line extending to the right.

Joan Marsh

cc: Edward Lazarus  
Rick Kaplan  
Zachary Katz  
Gardner Foster  
Julius Knapp  
John Leibovitz  
Rod Porter  
Amy Levine  
Paul de Sa  
Mindel de la Torre