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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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:

In recent *ex parte* filings, DISH Network Corporation (“Dish”) has stated that immediate “grant of [its] transactions and associated waivers is critical” to enable it to move forward with its planned nationwide wireless network¹ and that it is “a competitive entrant that is well-financed with a demonstrated track record of facilities-based competition on a national level.”² In other words, DISH is ready, willing and able to enter the mobile broadband market if the Commission will repurpose the S Band for terrestrial mobile broadband. Yet Dish also claims that it needs more time to deploy its network than similarly situated licensees. Dish proposes to wait at least three years before beginning its deployment, because it says it would prefer to avoid using the most advanced mobile broadband technology that is being deployed today—LTE, a technology still in its infancy—in favor of waiting for a future enhancement of that technology, LTE Advanced.

Clearly, repurposing the S Band for terrestrial mobile broadband will yield significant public interest benefits. As Chairman Genachowski has repeatedly warned, the explosion of mobile broadband usage is precipitating a “looming spectrum crisis,”³

¹ See Letter from Alison A. Minea, Corporate Counsel, DISH Network Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket Nos. 11-149, 11-150, 1 (filed Feb. 3, 2012).

² See Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH Network Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket Nos. 11-149, 11-150, 2 (filed Feb. 2, 2012) (“Dish Letter”).

³ See, e.g., Julius Genachowski, Chairman, Federal Communications Commission, Remarks at CTIA Wireless IT & Entertainment: America’s Mobile Broadband Future, 1-2 (Oct. 7, 2009).

creating a critical need for more spectrum that can be used for mobile broadband service. But time is of the essence in bringing this additional capacity to market; unnecessary delay will not serve the public interest. Indeed, Cisco recently projected that by 2016 mobile data will amount to 130 exabytes annually, 18 times current levels.⁴ Accordingly, if the Commission is to consider granting Dish’s waiver requests, the public interest requires prompt network construction, along the lines of the LightSquared build out requirements.

The Commission also should require, as a condition of any such waiver, that Dish operate its lower 700 MHz E Block license in accordance with the conditions imposed on the remaining E Block licenses in the AT&T/Qualcomm order.⁵ Such a condition would have wide ranging public interest benefits including supporting robust broadband deployment throughout the 700 MHz band by relieving other lower 700 MHz licensees from the harmful interference that would result from high-powered broadcast use, while still preserving the utility of Dish’s 700 MHz spectrum to support its wireless broadband operations through supplemental downlink operations.⁶

I. If Dish Receives a Waiver to Use the S Band for Mobile Broadband, it Should be Subject to the Same Build Schedule As LightSquared.

The DBSD and TerreStar waiver applications refer specifically to the LightSquared “precedent.”⁷ Yet even as Dish purports to invoke the LightSquared

⁴ See Cisco, *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2011-2016*, 3 (Feb. 14, 2012) available at http://www.cisco.com/en/US/solutions/collateral/ns341/ns525/ns537/ns705/ns827/white_paper_c11-520862.pdf.

⁵ 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, ¶¶ 61 (rel. Dec. 22, 2011) (“*Qualcomm Order*”).

⁶ See Letter from George Y. Wheeler, Holland & Knight LLP to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 11-149 (filed Feb. 2, 2012).

⁷ 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., Transferees, Consolidated Application for Transfer of Authorizations, Narrative at 37, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279 (filed Aug. 22, 2011) (“TerreStar Application”). On February 15, 2012, the International Bureau released a Public Notice seeking comment on its tentative conclusion to vacate LightSquared’s integrated service waiver and to revoke its ATC authority. See International Bureau Invites Comment on NTIA Letter Regarding LightSquared Conditional Waiver, IB Docket No. 11-109, *Public Notice*, DA 12-214 (rel. Feb. 15, 2012). However, if the Bureau acts upon its proposal, it will be for technical reasons that are completely unrelated to the reasons Dish gave for relying on the waiver as precedent and the reasons why buildout requirements similar to those imposed on LightSquared would be appropriate here. Indeed, the

waiver as precedent for its own request, it simultaneously argues that it is *different* from LightSquared and should not be subject to the same build-out requirements. This attempt by Dish to have its cake and eat it too is untenable. The main public interest benefit of proceeding by waiver, rather than rulemaking, is that a waiver would expedite deployment of the spectrum at issue.⁸ That is certainly an important benefit, but there is no reason for the Commission to grant Dish a waiver, while simultaneously allowing Dish to sit on the spectrum for three years before even beginning to deploy facilities. Even if Dish’s reasons for wanting to wait were valid, the resulting delay in putting the spectrum to use would undermine any justification for reallocating the S Band by waiver. However, Dish’s attempts to justify this delay are plainly not valid and should be rejected.

By its own admission, Dish is “a competitive entrant that is well-financed with a demonstrated track record of facilities-based competition on a national level.”⁹ If this transaction is consummated and Dish is permitted to use the S Band for terrestrial, rather than MSS/ATC service, it will obtain a substantial windfall. There is no reason Dish could not obtain the necessary capital to promptly build out that spectrum. As Dish has noted, financing is not the issue.

Similarly, technology and equipment could be readily obtained. Far from being the “sub-optimal” technology Dish describes, LTE is the most advanced mobile broadband technology available, and it is still in its infancy. 3GPP has already standardized the S Band for terrestrial mobile use, creating Band 23 for that purpose. If properly motivated, Dish could begin to procure Band 23 LTE equipment and devices very quickly. Dish does not deny that it could begin to deploy LTE much sooner than 2015. So why wait until 2015 before even starting to deploy facilities?

Dish offers a number of excuses, none of which justifies putting the S Band in mothballs. Dish complains that if it built out immediately (using the most advanced technology available—LTE) it later would be forced to migrate to LTE Advanced once network equipment and consumer devices became available. Dish argues that this would “needlessly” trigger network modernization costs and backward compatibility issues. As Dish notes, however, other carriers will also migrate to LTE Advanced in the future. They will face the same costs and issues. Moreover, Dish glosses over the straightforward glide-path between LTE and LTE-Advanced that was designed into the LTE standard. Because LTE Advanced will be backward compatible, no equipment would be stranded. Indeed, if knowledge that the future would bring technology

fact that LightSquared’s MSS spectrum will not be available to alleviate the spectrum shortage only makes it more important that the 2 GHz MSS spectrum be put to use in the public interest as soon as possible.

⁸ See, e.g., LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component, SAT-MOD-20101118-00239, *Order and Authorization*, 26 FCC Rcd 566, ¶ 34 (2011) (identifying the rapid terrestrial buildout obligations of LightSquared as being one justification for granting an integrated service rule waiver).

⁹ Dish Letter at 2.

enhancement were sufficient justification for putting off network investment, nothing would ever be built. There undoubtedly will be other network technology advancements on the horizon in 2015. Would Dish then propose to wait three more years to avoid migration costs associated with transitioning from LTE Advanced?

Dish further claims that it might be forced into infrastructure sharing with other carriers if it had to start deploying facilities any sooner than three years from now. This empty “threat” by Dish is completely unsubstantiated and is facially suspect given that Dish concedes that its financial wherewithal is not at issue. But equally important, the suggestion that infrastructure sharing is somehow problematic is specious. To the contrary, various forms of infrastructure sharing arrangements are commonplace today, and not just with incumbent carriers. Tens of thousands of cell sites are owned by tower companies who are actively seeking carriers willing to “share” their facilities. In addition, carriers commonly use contractors to perform site acquisition and network construction. Indeed, Sprint has a contract with Ericsson to manage the construction and operation of its entire next generation network.¹⁰ In short, the expertise and facilities that can facilitate a more rapid deployment are not found exclusively with “incumbent” carriers. Dish’s assertion that in order to deploy more quickly, it might have to partner with others is thus no reason to let this spectrum lie fallow for years.

Lastly, Dish says that its plan to offer retail services would present challenges that a wholesale provider like LightSquared does not face, such as establishing a brand identity, developing retail distribution, billing and customer support, and developing a device line up. This is a red herring. In each area, Dish has a decided advantage over LightSquared (wholly apart from the GPS interference issues with LightSquared’s spectrum). Dish already has a nationally recognized brand, a national retail distribution network, customer billing systems, customer care centers, and a wealth of experience procuring customer devices. LightSquared does not. Indeed, the choice of business model—retail or wholesale—has no impact on the need for devices; either way devices need to be procured. And it could be argued that having Dish do this directly in its role as a retail provider could be more efficient than if it pursued a wholesale model. Moreover, the distinction Dish wishes to draw is undermined by the fact that it is already contemplating wholesale services, as disclosed in a recent *ex parte*.¹¹ To the extent that there are any benefits in terms of scale or time to market that accrue as a result of wholesaling, such benefits would be available to Dish at its own discretion.

Dish’s efforts to distinguish its satellite business plan from LightSquared’s are similarly unpersuasive. Just as in the case of LightSquared, Dish plans to construct a new nationwide wireless network using advanced 4G technologies. While Dish makes much

¹⁰ See Press Release, Ericsson, Ericsson Selected for Sprint's Network Vision Program (Dec. 6, 2010) available at <http://www.ericsson.com/news/1469429>.

¹¹ See Letter from Alison A. Minea, Corporate Counsel, DISH Network Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket Nos. 11-149, 11-150, 1 (filed Feb. 14, 2012) (discussing “conditions that would facilitate competitive carriers’ access to DISH’s planned nationwide wireless network”).

of its need to “integrate two satellite networks with its terrestrial system,”¹² this is no more complicated than LightSquared’s need to integrate both its U.S. and Canadian licensed satellites with its own network while also protecting its existing satellite subscribers and coordinating with Inmarsat. Moreover, as the integration requirement is the primary subject of one of the waivers sought by Dish, it is not entirely clear what satellite-terrestrial integration Dish needs to do. The LightSquared deployment schedule is the most appropriate precedent for this case because it was adopted by the Commission under essentially the same circumstances. Indeed, as mentioned above, the DBSD and TerreStar applications expressly seek the integrated service waivers consistent with the LightSquared “precedent.”¹³

In a nutshell, repurposing the S Band for mobile broadband service would have obvious public interest benefits. Moreover, the waiver process Dish proposes has one, and only one, potential advantage over a rulemaking. Theoretically, it could speed the delivery of much needed mobile broadband capacity, putting the S Band to use much sooner. Dish’s reasons for proposing to wait three years before even beginning to deploy would eliminate this public interest benefit. Without a condition requiring a reasonable construction schedule, along the lines of the LightSquared build schedule, a waiver simply cannot be justified.

II. Any Waiver Granted Should Include Conditions To Ensure that Dish’s Use of the Lower 700 MHz E Block Will Not Interfere with Other Lower 700 MHz Block Licensees.

AT&T also agrees with United States Cellular Corporation (“US Cellular”) that there are “substantial public interest benefits” to harmonizing the technical requirements of Dish’s lower 700 MHz E Block licenses with other 700 MHz licenses.¹⁴ Adopting such a condition would remove an interference constraint on the use of the other lower 700 MHz band spectrum blocks, while also maintaining the utility of the lower 700 MHz E Block through the use of supplemental downlink technology in support of Dish’s wireless broadband operations, as described in the *Qualcomm Order*.¹⁵ As US Cellular

¹² Dish Letter at 5.

¹³ 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., Transferees, Consolidated Application for Transfer of Authorizations, Narrative at 37, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279 (filed Aug. 22, 2011) (“TerreStar Application”).

¹⁴ See Letter from George Y. Wheeler, Holland & Knight LLP to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 11-149, 1 (filed Feb. 2, 2012) (“US Cellular Letter”).

¹⁵ See *Qualcomm Order*, ¶ 14.

notes, harmonization of the technical rules governing the E Block would be a huge step toward unlocking the full potential of the lower 700 MHz band and would “facilitate widespread deployment of broadband services and competition, including access to broadband in rural and underserved areas.”¹⁶

In response, Dish does not indicate that such conditions would impair the value of its E Block licenses, or complain that it has plans to deploy services in the future that such harmonization would frustrate. It says merely that it is considering using the E Block for mobile-video, and has not “committed to using its 700 MHz spectrum for mobile broadband.”¹⁷ In other words, in response to the very real harms that high powered use of the E Block presents for the lower A Block and D Block, and the obvious public interest benefits that harmonizing the E Block rules would have for users of these bands, Dish can identify no harms to itself or the public that would result. Bringing uniformity to the lower 700 MHz E Block will bring certainty to the other licensees in the band and facilitate the planning and deployment of wireless broadband services. Should the Commission grant the waiver Dish seeks, it should also address lower 700 MHz E Block harmonization in the waiver, rather than putting it off to a later rulemaking.

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¹⁶ US Cellular Letter, Attachment at 2. It should be noted that to fully unlock the potential of the lower 700 MHz band, Channel 51 must also be cleared of broadcast uses. *See* Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 11-18, 3 (filed Dec. 9, 2011).

¹⁷ Dish Letter at 5.

Dish's waiver requests have the potential to make available substantial new mobile broadband spectrum. However, should the Commission elect to grant these waivers, it should ensure that the underlying public interest justification—the prompt deployment of robust mobile broadband services—is realized. To this end, the Commission should follow its most recent and relevant precedents by requiring a reasonable buildout schedule consistent with the one adopted in the *Harbinger/SkyTerra Order*¹⁸ and by harmonizing wireless operations in the lower 700 MHz E Block consistent with the standards adopted in the *Qualcomm Order*.

Sincerely,

A handwritten signature in black ink, appearing to read 'JM', followed by a horizontal line extending to the right.

Joan Marsh

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

¹⁸ 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).