

November 27, 2012

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

RE: Notice of *Ex Parte* presentation in: WT Docket Nos. 10-4, 12-69, 12-70

Dear Ms. Dortch:

On November 26, I spoke with David Goldman, advisor to Commissioner Rosenworcel, with regard to the above captioned proceeding.

With regard to Docket No. 12-70 (AWS-4), Public Knowledge generally supports repurposing the AWS-4 spectrum, with conditions recommended in previous filings as part of the Public Interest Spectrum Coalition (PISC) to ensure a return to the public for the use of the asset and to discourage DISH from “flipping” the spectrum and realizing an unjust windfall. In particular, I stressed the importance of a “use or share it” provision as ensuring productive use of spectrum that would not interfere with DISH deployment. Such a provision would also serve as an insurance policy against possible technical or financial difficulties disrupting DISH’s plans. Rather than the spectrum remaining idle while DISH deploys, use it or share it would permit others to productively use the spectrum. This would also encourage development of new spectrum sharing technology.

With regard to possible interference with or from the AWS-2 H Block, I stated that the critical question is whether and to what extent the proposed changes to the out of band emission (OOBE) limits on AWS-4 devices operating in the uplink band, and/or the reduced power levels, would require modification of an approved 3GPP standard. Significant delay in approval of a modification to the existing 3GPP standard would delay the availability of equipment, and reduce the likelihood that DISH will be able to deploy a competing network. At the same time, the Commission properly recognizes the need to “hedge its bets” on competition by bringing more spectrum to market via auction.

Nevertheless, the Commission should carefully consider whether it should impose all cost for mitigation of potential interference on DISH in an effort to enhance the potential value of H Block. In particular, PK recommends that the Commission not reduce the power approved for DISH’s uplink spectrum. Instead, as a means of distributing the burden for repurposing spectrum in a more equitable manner, PK recommends imposing higher OOBE limits on H Block. Alternatively, PK recommends that the FCC state by rule that the assumption for purposes of protecting DISH from “harmful interference” assumes the lower power level. To the extent DISH uses the higher power level – subject to the stricter OOBE limits set elsewhere in the order – it does so subject to the risk of interference from the eventual H Block licensee.

The approach allows DISH to use the approved 3GPP standard (subject to the stricter OOB limits), whereas adjustment of the power levels will require modification of the approved standard. It also will set a precedent for greater flexibility for interference mitigation when repurposing broadcasting spectrum by allowing a licensee (DISH) to voluntarily accept a risk of interference in exchange for higher power. Such an approach is also consistent with the reality that users are increasingly engaged in upload activity and not merely download activity as cloud storage becomes more common.

With regard to Docket No. 10-4 (Wireless Boosters) and Docket No. 12-69 (700 MHz Interoperability), I noted that it is inconsistent as a matter of policy to assert that licensees have a right to control network attachments with regard to wireless boosters, but not with regard to 700 MHz interoperability. If the Commission affirms the position of carriers that they have a right under their licenses to demand consent for network attachment that the Commission may not modify through a duly noticed rulemaking, it must logically follow that a 700 MHz licensee can refuse to grant permission for an attachment that is interoperable. If anything, the logic that a 700 MHz licensee has a “right” which cannot be subsequently modified is stronger in the context of interoperability. Wireless boosters are intrinsically interoperable, as they merely boost the signal of a device already approved by the network operator. It imposes no new cost to the network operator to permit use of a booster. To the contrary, it actually requires the network operator to expand considerable effort to reject a standard booster. By contrast, requiring 700 MHz interoperability imposes significant redesign and deployment costs on existing incumbents that have deployed equipment.

It is certainly possible to distinguish between permitting boosters without consent and requiring interoperability as a matter of policy – although Public Knowledge continues to believe that permitting boosters without consent is the better policy for reasons previously stated in this docket. If the Commission wishes to protect its authority to order mandatory interoperability, however, it is critical that the Commission reject the argument that licensees have a property right or other right under the Act to reject a device approved by the Commission when so ordered by the Commission.

In addition, with regard to wireless boosters, two recent events have made conclusion of this proceeding increasingly urgent. First, as demonstrated in Hurricane Sandy, allowing consumers to purchase boosters so that they can reach more distant cell sites is one way in which consumers can prepare for emergencies when local towers may suffer damage or power outages. Commissioner Rosenworcel has stressed that consumers need to take affirmative steps for emergency preparedness. Making boosters broadly available is one way the Commission can assist in that endeavor.

Second, both Verizon and AT&T have announced in recent months that they intend to discontinue wireline service in many rural areas and migrate their wireline customers to 4G LTE. It is the nature of wireless service that coverage is uneven as a consequence of terrain and changing atmospheric conditions. Accordingly, particularly in rural areas, there is no assurance that wireless will meet the quality of service of wireline even where the network operator has taken all appropriate steps to ensure that quality does not suffer.

The availability of boosters will significantly aid the transition from wireline to wireless by providing a cost-effective means of addressing this problem. A former wireline subscriber that discovers that, for whatever reason, they do not get consistent signal quality in the home can resolve this problem with a one-time purchase of a booster. This will go a long way to resolving the problem of “stranded customers” who would otherwise need to maintain wireline service.

In accordance with the FCC’s *ex parte* rules, this document is being electronically filed in the above-referenced dockets today.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Harold Feld  
Senior VP  
Public Knowledge

CC: David Goldman