

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
DISH Network Corporation Petition for Waiver of Section 27.5(j) and 27.53(h)(2)(ii) and Request for Extension of Time)	WT Docket No. 13-225
)	
Service Rules for Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands)	WT Docket No. 12-357
)	

REPLY COMMENTS OF SPRINT CORPORATION

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I. INTRODUCTION

Sprint Corporation (“Sprint”) respectfully submits these reply comments in response to the Public Notice in the above-captioned proceeding.¹ Sprint reaffirms its support for achieving interoperability and increased roaming capability in the lower 700 MHz band.² As part of the proposed voluntary agreements among certain 700 MHz licensees to effectuate interoperability, DISH Network Corporation (“DISH”), one of the two licensees holding the majority of the lower 700 MHz E Block licenses, has agreed to reduced power levels for its E Block operations, but only if the Commission grants DISH certain modifications and waivers affecting unrelated spectrum. Specifically, in exchange for its consent to the 700 MHz agreement, DISH requested that, among other things, the Commission waive the uplink designation for the lower AWS-4

¹ DISH Network Corporation Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) and Request for Extension of Time, WT Docket No. 13-225, *Public Notice*, DA 13-1877 (rel. Sept. 13, 2013).

² Sprint notes that the Commission today adopted an order memorializing certain aspects of the 700 MHz interoperability agreements. *See* Deletion of Agenda Item From October 28, 2013 Meeting, *Public Notice* (rel. Oct. 28, 2013).

band at 2000-2020 MHz and give DISH a 30-month period to choose, in its sole discretion, whether to conduct uplink or downlink operations in the lower AWS-4 band.³

In its comments, Sprint expressed narrow and qualified support for DISH's waiver request, noting that the public interest benefits of revising the Commission's AWS-4 technical rules were uncertain⁴ and that a grant of the waiver should be subject to two important conditions.⁵ DISH's reply comments overstated Sprint's position, and accordingly, clarification is necessary to ensure that any grant of the waiver serves the public interest and provides for full compliance with the Commission's policies and rules.⁶

II. THE RECORD SUGGESTS THAT, APART FROM DISH'S ROLE IN ENABLING THE 700 MHz AGREEMENT, THE PUBLIC INTEREST BENEFITS FROM THE DISH WAIVER ARE UNCERTAIN

Sprint recognizes the public interest benefits that would flow from the 700 MHz interoperability agreement. The public interest benefits from the agreement largely stem from AT&T's commitment to incorporate Band Class 12 capability into its network and to offer Band Class 12 end-user devices. The benefits from reduced power levels in the 700 MHz E Block, however, are less apparent, and the actions DISH requests of the Commission do not appear to be technically essential to effectuating 700 MHz interoperability.⁷ As Sprint explained in its

³ Petition for Waiver of DISH Network Corporation, WT Docket No. 13-225, at 1-2 (Sept. 25, 2013). DISH also conditioned its consent to the 700 MHz interoperability agreement on modification of the applicable E Block buildout requirements and requested a one-year extension of the AWS-4 final buildout date. *Id.* at 2, 5.

⁴ Comments of Sprint Corporation, WT Docket No. 13-225, at 3 (Sept. 30, 2013).

⁵ Sprint Comments at 5.

⁶ *See, e.g.*, Reply Comments of DISH Network Corporation, WT Docket No. 13-225, at 2-3 (Oct. 17, 2013). DISH's reply comments were filed October 17, 2013, in advance of the Commission's revised filing deadline for this proceeding. To provide clarification of its position, Sprint addresses DISH's October 17 filing in these reply comments.

⁷ Sprint Comments at 3 n.8 (citing Letter from Jeffrey H. Blum, Senior Vice President and Deputy General Counsel, DISH Network Corporation, to Marlene H. Dortch, Sec'y, Federal Communications Commission, WT Docket No. 12-69, at 1-2 (dated Aug. 8, 2013) and Letter from Steven K. Berry, President and CEO, Competitive Carriers

comments, DISH previously stated that high power operations in the 700 MHz E Block would not cause interference in the lower 700 MHz A, B or C Blocks.⁸ An alliance of lower 700 MHz licensees also stated that it does not share AT&T's E Block interference concerns.⁹ AT&T, however, conditioned its interoperability commitments on DISH accepting reduced E Block power limits. DISH in turn conditioned its consent to reduced power levels on a waiver of the recently adopted AWS-4 technical rules and the provision of a 30-month option to decide whether to use the 2000-2020 MHz spectrum for uplink or downlink operations. This interdependent web of tenuously related commitments is only redeemed by the compelling benefits afforded by a 700 MHz interoperability solution, by DISH fulfilling its promised H Block auction participation and by DISH timely and fully meeting its BAS reimbursement obligations if it becomes an H Block licensee.

DISH is incorrect that the grant of the waiver itself “offers substantial uncontested public interest benefits.”¹⁰ While the interoperability agreement is intended to correct a recognized problem at 700 MHz, the potential public interest benefits arising directly from the waiver would only be realized if DISH chooses to use the lower AWS-4 band for downlink operations. As Sprint noted, it does not disagree that reallocating the lower AWS-4 band from uplink to downlink would enable both AWS-4 licensees and prospective H Block licensees to make more intensive use of this spectrum and would obviate technical requirements now in place to

Association, et al., to Chairwoman Mignon Clyburn, Federal Communications Commission, WT Docket No. 12-69, at 1 (dated Sept. 10, 2012)).

⁸ *Id.*

⁹ *Id.*

¹⁰ DISH Reply at 2. DISH argues the record reflects “uncontested” public interest benefits supporting the waiver, despite the fact that Sprint stated in its comments that the public interest benefits were uncertain, and NTCH, Inc. argued that the waiver request itself was “improper.” *See, e.g.*, Sprint Comments at 3; Comments of NTCH, Inc., WT Docket No. 13-225, at 1 (Sept. 30, 2013).

minimize interference between the bands.¹¹ In this sense, the waiver is essentially the grant of the right to defer an important spectrum utilization choice for two and one-half years and does not confer any public interest benefits unless DISH elects, in its sole discretion, to change the use of the lower band of AWS-4 spectrum to downlink operations.¹²

III. GRANT OF THE WAIVER SHOULD BE CONDITIONED ON DISH'S FULL COMPLIANCE WITH ITS COMMITMENTS AND THE COMMISSION'S POLICIES AND RULES

The Commission's grant of the waiver should be strictly conditioned upon (1) DISH bidding at least the aggregate nationwide reserve price in the H Block auction, and (2) DISH's full and timely compliance with the BAS clearing reimbursement obligations for H Block licensees.

Sprint notes that DISH agrees that the proposed waiver should be conditioned on DISH's commitment to bid at least the aggregate nationwide reserve in the H Block auction (currently \$1.56 billion) and that DISH acknowledges that "Sprint's call for grant of the [p]etition to be 'strictly conditioned upon . . . DISH bidding at least the aggregate nationwide reserve price in the H Block auction' is uncontested."¹³ Accordingly, if the Commission grants the waiver petition, it should structure the language of the grant to include DISH's H Block minimum bid commitment as an express condition of the waiver's effectiveness.

In its waiver petition, DISH indicated that as part of the requested waiver and extension of time, it would commit to operate any future downlink terrestrial fixed or base stations in the

¹¹ Sprint Comments at 3.

¹² Furthermore, if DISH waits until after the H Block auction to make a downlink determination, the public interest benefit of downlink at 2000-2020 MHz could be largely offset by the resulting uncertainty that would necessarily cloud the H Block auction.

¹³ DISH Reply at 3 (quoting Sprint Comments at 4). Although DISH appears to support the condition, the Commission must make it an express condition of any AWS-4 waiver grant to assure its enforceability.

2000-2020 MHz band “consistent with the technical requirements applicable to other fixed/base stations in the AWS-4 band at 2180-2200 MHz and adjacent operational PCS/AWS bands.”¹⁴

DISH then went on to provide proposed power and emission limits.¹⁵ In its reply comments, DISH appears to alter its commitment, stating that it will comply only with “the power and emission limits explicitly stated in the [p]etition,” and noting that DISH’s commitment “does not extend to other Commission rules that may apply to other AWS or PCS services.”¹⁶

The Commission should not permit DISH to decide which technical rules it wishes to comply with, as such decisions could impact adjacent users. In addition to the power and emissions limits DISH has specifically noted in its petition, AWS-4 downlink operations at 2000-2020 MHz should be required to meet all other power rules that apply to the adjacent H Block downlink operations at 1995-2000 MHz, including 47 C.F.R. § 27.50 (d)(5) (equipment authorization and average power measurement requirements) and 47 C.F.R. § 27.50(d)(6) (peak transmit power measurement requirements). The Commission should also require DISH to comply with a modified version of 47 C.F.R. § 27.50(d)(10), which would require advanced coordination of high-powered AWS-4 downlink operations at 2000-2020 MHz with H Block licensees within 120 kilometers of AWS-4 base or fixed stations. With respect to emission limits, the Commission should also require AWS-4 downlink operations at 2000-2020 MHz to comply with 47 C.F.R. § 27.53(i) and 47 C.F.R. § 27.53(n).¹⁷ In addition, the Commission should require DISH to comply with all other technical rules contained in Subpart C of 47 C.F.R.

¹⁴ DISH Petition for Waiver at 11.

¹⁵ *Id.*

¹⁶ DISH Reply at 7.

¹⁷ 47 C.F.R. §§ 27.53(i), (n). These rules hold that when an emission of a Part 27 transmission outside of the authorized bandwidth causes harmful interference, the Commission may require greater attenuation of the emission.

Part 27, as well as other appropriate sections of the Commission’s technical rules, absent a detailed and compelling rationale for why a particular technical requirement should not apply.

Sprint notes that there are no objections in the record to its proposal that the Commission grant a blanket waiver to all future H Block licensees so that the restrictive out-of-band emission limits contained in 47 C.F.R. § 27.53(h)(2)(iv) will not apply if 2000-2020 MHz is used as downlink.¹⁸ Accordingly, Sprint again encourages the Commission to adopt this H Block rule waiver in association with any grant of the DISH broader waiver request.

DISH’s objections to Sprint’s proposed BAS reimbursement condition are misplaced. DISH argues that because the H Block BAS reimbursement obligations¹⁹ apply to all H Block auction winners,²⁰ “there is no basis” for subjecting DISH to “additional or different enforcement procedures.”²¹ DISH’s stance ignores the unique position afforded to it by a grant of the waiver (which distinguishes it from other H Block auction participants), as well as its past role in challenging the Commission’s spectrum relocation cost reimbursement rules and policies.²² The reasoning behind conditioning a grant of the waiver on compliance with the H Block reimbursement obligations is twofold. First, grant of the waiver confers upon DISH a unique and valuable benefit. It provides DISH the flexibility to operate outside the purview of previously adopted technical rules and to alter the outcome of a finalized rulemaking proceeding, *i.e.*, the AWS-4 rulemaking establishing 2000-2020 MHz for uplink operations. Such

¹⁸ Sprint Comments at 8-9. Sprint notes that this proposal would not in any way change the emissions limits from the H Block downlink band at 1995-2000 MHz into the PCS downlink band, including the G Block, at 1930-1995 MHz.

¹⁹ See 47 C.F.R. §§ 27.1021, 27.1031.

²⁰ DISH Reply at 3.

²¹ DISH Reply at 4.

²² See Sprint Comments at 7 n.18.

exceptional treatment should only be bestowed upon, and retained by, an entity that complies with the Commission's fundamental policies and rules. Second, DISH's own recent history demonstrates a propensity to vigorously challenge its spectrum relocation cost reimbursement obligations.²³ Conditioning a grant of the AWS-4 waiver on DISH's full and timely compliance with the BAS clearing reimbursement obligations for H Block licensees will provide the Commission with greater assurance that DISH will timely and fully comply with the Commission's important policies and rules—compliance that should be expected from a party benefitting from such an unprecedented and highly contingent waiver request.

IV. CONCLUSION

For the foregoing reasons, Sprint submits that the relief DISH seeks in its waiver petition should be conditioned upon DISH's commitment to bid at least the aggregate nationwide reserve price in the upcoming H Block auction and upon its full and timely compliance with the BAS reimbursement payment requirements set forth in the Commission's rules.

Respectfully submitted,

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²³ See *id.*