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## **EX PARTE PRESENTATION**

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

Re: Ex Parte Presentation in GN Docket No. 13-185, *Amendment of the Commission's Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network Corporation ("DISH") files this letter in response to a Verizon *ex parte* letter in the above-referenced docket.<sup>1</sup>

First, Verizon's characterization of the current status of 3<sup>rd</sup> Generation Partnership Project ("3GPP") work on AWS-3 spectrum is entirely inaccurate.<sup>2</sup> There is no work that is "already underway" to develop a band class encompassing AWS-1 and AWS-3 spectrum. In particular, there is no work item created for a band plan incorporating to-be-auctioned AWS-3 spectrum, and the next opportunity to approve any such work item is in June 2014 at the 3GPP RAN meeting. At the very most, there may be 3GPP members who plan to submit a draft version of a band proposal to the working group RAN4 meeting scheduled for the week of March 31, 2014. Only upon agreement at the RAN4 level for such a work item and subsequent RAN approval in June 2014 can the band plan work begin. DISH challenges Verizon to produce evidence to substantiate its claims that 3GPP work has started.

Second, Verizon's suggestion that there may be "technical limitations" that would prevent or delay the addition of 2180-2200 MHz to the AWS downlink ecosystem is equally

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<sup>1</sup> See Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, GN Docket No. 13-185 (March 19, 2014).

<sup>2</sup> *Id.* at 2 ("In addition, we discussed the 3GPP standards work that is already underway to develop a single AWS-1/3 band class. Adding AWS-4 downlink spectrum could slow this work, resulting in delayed AWS-3 deployment and device availability.")

misguided.<sup>3</sup> DISH's proposal for interoperability between the AWS-1, AWS-3, and AWS-4 downlink bands impacts only *devices*, which are operating in receive mode and are not subject to any transmit restrictions. Furthermore, nothing in DISH's proposal requires any changes to base stations operating in transmit mode in the downlink band for AWS operators. Therefore, Verizon's introduction of the possible impact of "federal AMT operations at 2200-2290 MHz" on "AWS-3 equipment that also includes the AWS-4 downlink band" is irrelevant.<sup>4</sup> Such federal operations are only relevant to DISH's base stations in 2180-2200 MHz.

Nor should the Commission be deterred by Verizon's claim that "the 3GPP has not created an asymmetrical band class, such as the one proposed by DISH."<sup>5</sup> 3GPP already has a precedent of standardizing asymmetrical combinations, for example when Band 29 was developed, or in the case of asymmetrical downlink and uplink allocations in various carrier aggregation configurations. Furthermore, whenever 3GPP does take up the creation of a new band plan for AWS-3, it could easily incorporate variations of band plans to alleviate any further concerns to the extent they are presented at 3GPP. These variations could all operate through a single 90+70 MHz duplexer.

Finally, DISH acknowledges that its *specific* interoperability proposal was made towards the end of the AWS-3 proceeding. However, the general concept of interoperability has been discussed in the record at length as it relates to combining the AWS-1 and AWS-3 bands,<sup>6</sup> and

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<sup>3</sup> *Id.* ("We discussed that there may be other technical limitations that could prevent or delay the development of a band class that includes AWS-1, AWS-3, and AWS-4 downlinks.")

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

<sup>5</sup> *Id.*

<sup>6</sup> See Letter from George Y. Wheeler, Peter M. Connolly, and Leighton T. Brown, United States Cellular Corporation, to Marlene H. Dortch, FCC, GN Docket No. 13-185, at 3 (February 27, 2014) (Asking the Commission to require that "(1) all AWS-3 mobile devices be capable of transmitting across the entire 1710-1780 MHz uplink band and receiving across the entire 2110- 2180 MHz downlink band; and (2) all AWS-3 networks support and permit the use of such mobile devices."); Reply Comments of T-Mobile USA, Inc., GN Docket No. 13-185, at 21 (October 28, 2013) ("[T]he Commission should consider an interoperability mandate at least for the 1755-1780 MHz band..."). See also Letter from C. Sean Spivey, Competitive Carriers Association, to Marlene H. Dortch, FCC, GN Docket No. 13-185, at 3 (March 6, 2014) ("CCA urged the Commission to adopt an interoperability requirement for the AWS-3 band."); Reply Comments of the Rural Wireless Association, GN Docket No. 13-185, at 7-8 (filed October 28, 2013) ("[I]t is imperative that the Commission adopt rules requiring interoperability in the AWS-3 band in order to increase deployment of wireless broadband services to rural America. Mandating interoperability across the AWS-3 band will avoid a repeat of the problems small wireless carriers have experienced with obtaining devices that work in the Lower 700 MHz band, which has left them unable to effectively compete against large carriers in their markets and has significantly delayed deployment of services. Not requiring a fully interoperable AWS-3 device ecosystem could result in a repeat of the delayed roll-out of the Lower 700 MHz band."); Letter from Tamara Preiss, Verizon, to Marlene H. Dortch, FCC, GN Docket No. 13-185, at 2 (February 3, 2014) (Asking the FCC to "adopt technical rules for the AWS-3 spectrum that are consistent with the rules for the AWS-1 band, including a mobile uplink power limit of +23 dBm EIRP, which will facilitate use of the AWS-3 spectrum and interoperability across AWS bands. We noted the opportunity for industry to promote handset interoperability through the

the Commission discussed in detail the efficiencies of combining adjacent spectrum with AWS-3 in the *AWS-3 NPRM*.<sup>7</sup> The record thus already reflects support for combining a legacy band with a newly auctioned band, and the addition of 20 MHz of AWS-4 is a logical outgrowth of that concept.

A rule requiring interoperability among the AWS-1, AWS-3 and AWS-4 downlink bands would satisfy the notice-and-comment requirement of the Administrative Procedure Act (“APA”), as that requirement has been interpreted by the Supreme Court and the courts of appeals, since it is a “logical outgrowth” of the Commission’s tentative finding in the *AWS-3 NPRM*. The APA requires an agency conducting notice-and-comment rulemaking to publish in its notice of proposed rulemaking “either the terms or substance of the proposed rule or a description of the subjects and issues involved.”<sup>8</sup> As the Supreme Court has stated, however: “The Courts of Appeals have generally interpreted this to mean that the final rule the agency adopts must be “a ‘logical outgrowth’ of the rule proposed.”<sup>9</sup> The courts have explained that a final agency rule need not be specifically set forth in the agency’s notice. In *Covad*, the D.C. Circuit stated that “[a]n agency’s final rule need only be a ‘logical outgrowth’ of its notice,” and that “[w]hether the ‘logical outgrowth’ test is satisfied depends on whether the affected party ‘should have anticipated’ the agency’s final course in light of the initial notice.”<sup>10</sup>

Here, the concept of interoperability among both the spectrum to be auctioned (AWS-3) and the immediately adjacent bands (AWS-1 and AWS-4) was adequately noticed in the *AWS-3 NPRM*. There, the Commission stated: “We tentatively find that having additional spectrum that is adjacent to that used for like services will promote efficiency in broadband deployment.”<sup>11</sup> While the *AWS-3 NPRM* went on to state that “the creation of an additional AWS allocation immediately adjacent to the current AWS-1 allocation will allow for more immediate equipment development and deployment,” this was only an application of the general rule that harmonized operations on adjacent spectrum promote efficiency.<sup>12</sup> The AWS-4 downlink (2180-2200 MHz), just like the AWS-1 downlink (2110-2155 MHz), is adjacent to the AWS-3 downlink (2155-

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development of a single band class that would cover AWS-1 and paired spectrum at 1755-1780 MHz and 2155-2180 MHz.”).

<sup>7</sup> See Amendment of the Commission’s Rules with Regard to Commercial Operations in the 1695-1710 MHz, 1755-1780 MHz, and 2155-2180 MHz Bands, GN Docket No. 13-185, *Notice of Proposed Rulemaking*, 28 FCC Rcd. 11479 (2013) (“*AWS-3 NPRM*”).

<sup>8</sup> 5 U.S.C. § 553(b)(3).

<sup>9</sup> *Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) (quoting *Nat’l Black Media Coal. v. FCC*, 791 F.2d 1016, 1022 (2d Cir. 1986)) (citing *United Steelworkers of Am., AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1221 (D.C. Cir. 1980), cert. denied sub nom. *Lead Industries Ass’n. v. Donovan*, 453 U.S. 913 (1981); *South Terminal Corp. v. EPA*, 504 F.2d 646, 659 (1st Cir. 1974)).

<sup>10</sup> *Covad Commc’ns Co. v. FCC*, 450 F.3d 528, 548 (D.C. Cir. 2006) (quotation omitted).

<sup>11</sup> *AWS-3 NPRM*, 28 FCC Rcd. at 11495 ¶ 30.

<sup>12</sup> *Id.* ¶ 30 (quoting T-Mobile’s Comments in Docket No. 10-142, at 7-8); see also *id.* ¶ 30 n.96 (“Current technology can more easily be extended to adjacent bands than to bands with different uplink/downlink separations.”) (quoting T-Mobile’s Comments in Docket No. 10-142, at 7-8).

2180 MHz). Rules that promote efficiency based on the principle of spectrum adjacency would thus be a logical outgrowth of the *AWS-3 NPRM*'s tentative finding, no matter which side of the AWS-3 downlinks the adjacent spectrum is on.

Respectfully submitted,

/s/ Jeffrey H. Blum

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