

September 16, 2016

**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 *Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service*, RM-11768; *WorldVu Satellites Limited, Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb System*, IBFS File No. SAT-LOI-20160428-00041

Dear Ms. Dortch:

The MVDDS 5G Coalition (the “Coalition”) submits this letter summarizing a meeting on Wednesday September 14, 2016 with Jose Albuquerque, Chief, Satellite Division, International Bureau; Chip Fleming, Chief Engineer, Satellite Division, International Bureau; Chris Helzer, Chief Engineer, Wireless Telecommunications Bureau; Brian Regan, Associate Bureau Chief, Wireless Telecommunications Bureau; Karl Kensinger, Deputy Chief, Satellite Division, International Bureau; Kerry Murray, Deputy Chief, Satellite Division, International Bureau; Matthew Pearl, Legal Advisor, Wireless Telecommunications Bureau; Clay Decell, Attorney, Satellite Division, International Bureau (by telephone); and Kal Krautkramer, Engineer, Satellite Division, International Bureau (by telephone). Present on behalf of the Coalition were: Jeff Blum, Mariam Sorond, John Kim, Sidd Chenumolu, Alison Minea, and Hadass Kogan of DISH; and Trey Hanbury and Tom Peters of Hogan Lovells.

During the meeting, the Coalition explained, consistent with its filings in the above-captioned proceedings,<sup>1</sup> that the Commission should deny OneWeb’s application to the extent it seeks access to the 12.2-12.7 GHz band. As an initial matter, the Commission’s rules require the Bureau to dismiss OneWeb’s application. Section 25.112(a) provides that an application that does not comply with the Commission’s rules or regulations “will be unacceptable for filing and will be returned to the applicant with a brief statement identifying the omissions or discrepancies.”<sup>2</sup> In this case, Section 2.106 of the Commission’s rules limits deployment in the 12.2-12.7 GHz band to three services: Fixed Service, Broadcast-Satellite Service and Fixed-Satellite Service.<sup>3</sup> Section 2.106 does not permit Mobile-Satellite Service operations in the

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<sup>1</sup> See *Petition to Deny of the MVDDS 5G Coalition*, IBFS File No. SAT-LOI-20160428-00041 (Aug. 15, 2016); *MVDDS 5G Coalition Reply to Opposition and Response of WorldVu Satellites Limited*, IBFS File No. SAT-LOI-20160428-00041 (Sept. 1, 2016).

<sup>2</sup> 47 C.F.R. § 25.112(a)(2).

<sup>3</sup> See 47 C.F.R. § 2.106, n.5.487A. The same rule limits operations in the 11.7-12.2 GHz band to Fixed-Satellite Service and Broadcast-Satellite Service. See *id.* § 2.106, n.5.458.

band.<sup>4</sup> Despite this limitation, OneWeb proposes offering Mobile-Satellite Service to terminals in motion on-board aircraft, maritime vessels and land vehicles.<sup>5</sup> OneWeb's proposed MSS offering conflicts with Section 2.106 of the Commission's rules.

While OneWeb may propose operations at odds with the Commission's rules, OneWeb must either request a waiver with its application or receive a waiver from the Commission acting on its own motion. Section 25.112(b) of the Commission's rules provides that the Commission will not process an application that conflicts with the Commission's rules unless the application is "accompanied by a request which sets forth the reasons in support of a waiver of (or an exception to), in whole or in part, any specific rule, regulation, or requirement with which the application is in conflict" or unless the Commission "upon its own motion, waives (or allows an exception to), in whole or in part" the conflicting rule.<sup>6</sup> Here, OneWeb neither submitted a waiver request with its application, nor accepted the Satellite Division's invitation to file a waiver for the company's proposed non-conforming use.<sup>7</sup> Under Section 25.112 of the Commission's rules, OneWeb's application – like other defective applications before it – must be dismissed.<sup>8</sup>

Notwithstanding the procedural deficiencies in OneWeb's application that necessitate an immediate dismissal, the Coalition also discussed the many reasons why a grant of OneWeb's application with respect to the 12.2-12.7 GHz band disserves the public interest:

First, grant of OneWeb's use of the 12.2-12.7 GHz band would essentially destroy any realistic prospect of MVDDS rollout. The MVDDS/NGSO technical analysis submitted by the Coalition showed that NGSO and MVDDS systems cannot coexist in the 12.2-12.7 GHz band

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<sup>4</sup> See 47 C.F.R. § 2.106.

<sup>5</sup> WorldVu Satellites Limited Petition for a Declaratory Ruling Granting Access to the U.S. Market for the OneWeb System, IBFS File No. SAT-LOI-20160428-00041, Attach. A at 10 (filed Apr. 28, 2016).

<sup>6</sup> 47 C.F.R. § 25.112(b)(1).

<sup>7</sup> See Letter from Jose P. Albuquerque, Chief, Satellite Division, International Bureau, FCC to Kalpak S. Gude, Vice President of Legal-Regulatory, WorldVu Satellites Limited, IBFS File No. SAT-LOI-20160428-00041 at 2 (filed June 10, 2016).

<sup>8</sup> See, e.g., Letter from Thomas S. Tycz, Satellite Division, International Bureau, FCC to Shawn Thompson, Director, Legal Services, DigitalGlobe Inc., IBFS File No. SAT-MOD-20040730-00010 at 2 (June 4, 2004) (dismissing an application to deploy non-government Earth Exploration Satellite Service in the 7997.5-8372.5 MHz band for failure to request a waiver of the applicable service rules); see also, e.g., Letter from Scott A. Kotler, Chief, Systems Analysis Branch, Satellite Division, International Bureau, FCC to Susan H. Crandall, Intelsat North America LLC, IBFS File No. SES-MFS-20081201-01521 at 1 (Dec. 16, 2008) (dismissing an earth station application to deploy service in the 3400-3600 MHz band for failure to request a waiver of the service rules in section 2.106).

even under the current rules.<sup>9</sup> NGSO satellite receivers would experience harmful interference from MVDDS transmitters and, depending on OneWeb's ultimate satellite configuration, the potential for harmful interference from NGSO satellites into MVDDS receivers exists. OneWeb's operations in the band would thus thwart use of the band for MVDDS; they would also prevent any future 5G mobile broadband services from operating in the band notwithstanding a petition for rulemaking to provide 5G service pending before the Commission.<sup>10</sup> With the record still devoid of the most basic information about OneWeb's earth station performance characteristics, the Coalition's MVDDS/NGSO Technical Analysis used very conservative performance characteristics for OneWeb's system based on commonly used parameters for these frequencies. The Coalition expressed its willingness to perform additional technical analysis if OneWeb provides the relevant earth station performance criteria that is necessary to permit more detailed analysis.

Second, OneWeb proposes *mobile*, ubiquitous service covering the entire United States, which makes the death blow to MVDDS that much more definitive. Mobile NGSO terminals would make an existing interference problem worse. Whether a mobile NGSO service is used while in motion or temporarily stationed, the precise locations and operating times for these receivers would be unknown to MVDDS operators, effectively foreclosing MVDDS from the entire country. Significantly, as explained above, OneWeb's application is procedurally defective because OneWeb has failed to request a waiver to permit its proposed nonconforming use, much less proven that the prerequisites to a waiver are met.

Third, permitting OneWeb's proposed use of the 12.2-12.7 GHz band would contravene the Commission's call for the terrestrial and satellite industries to collaborate in identifying additional spectrum for 5G services. A grant of 12.2-12.7 GHz authority for OneWeb would preclude terrestrial and satellite sharing and subtract from 5G spectrum, not add to it.

Fourth, the other 5,400 megahertz of spectrum outside of the 12.2-12.7 GHz band that OneWeb has sought should be more than enough for OneWeb to accomplish its vision. Indeed, OneWeb has not demonstrated its need for the entire spectrum it is seeking. A grant of 12.2-12.7 GHz mobile NGSO authority to OneWeb would also eliminate any desire to invest in, or deploy, terrestrial services using the band. The permanent loss of the potential to deploy the 12.2-12.7 GHz band for 5G is too steep a price to pay for the mere hope of NGSO implementation.

Finally, grant of the application would prejudice the rulemaking requested by the Coalition on the subject of opening up the band for 5G services. Terrestrial 5G represents the best use of the band in addition to its current successful use for DBS services. The Commission should put the Coalition's proposal as well as OneWeb's application to the test in a rulemaking proceeding. To prejudice the Coalition's Petition for Rulemaking would be to thwart the substantial public interest benefits of permitting 5G use of the band.

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<sup>9</sup> Tom Peters, MVDDS 12.2-12.7 GHz NGSO Coexistence Study at 18-19 (Aug. 15, 2016) (Exhibit 1 to Coalition Petition to Deny) ("MVDDS/NGSO Technical Analysis").

<sup>10</sup> See Petition of MVDDS 5G Coalition for Rulemaking, RM-11768 (filed Apr. 26, 2016) ("Coalition Petition for Rulemaking").

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Respectfully submitted,

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