

October 28, 2016

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12t Street, SW
Washington, DC 20054

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-LOT-20160428-00041

Dear Ms. Dortch:

WorldVu Satellites Limited (“OneWeb”) has requested access to the U.S. market for its non-geostationary satellite orbit (“NGSO”) system,¹ at the objection of the MVDDS 5G Coalition (the “Coalition”), among others.² If granted, OneWeb’s petition would severely restrict Multichannel Video Distribution and Data Service (“MVDDS”) in the 12.2-12.7 GHz band.³ OneWeb’s petition runs afoul of the Commission’s rules as well.⁴

The Commission is bound by its rules to return the procedurally defective petition to OneWeb as unacceptable for filing and should do so. If the Commission were to accept the filing for processing and consider granting the application, the Commission should limit any authorization to the provision of non-mobile, non-portable uses and condition the license on

¹ 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 (filed Apr. 28, 2016) (“*Petition for Declaratory Ruling*”).

² See *Petition to Deny of the MVDDS 5G Coalition*, IBFS File No. SAT-LOI-20160428-00041 (filed Aug. 15, 2016) (“*Petition to Deny*”); *MVDDS 5G Coalition Reply to Opposition and Response of WorldVu Satellites Limited*, IBFS File No. SAT-LOI-20160428-00041 (filed Sept. 1, 2016).

³ *Petition to Deny* at 2-4.

⁴ *Id.* at 8-9 (“[A]s the International Bureau has already explained to OneWeb, the Commission’s rules do not allow the operation of earth stations in motion communicating with NGSO space stations in frequencies allocated to FSS, and such operation would require a waiver of the Commission’s rules.”).

modifications to MVDDS, including the disposition of the Coalition’s pending Petition for Rulemaking to use the 12.2-12.7 GHz band for two-way mobile broadband.⁵

I. ONEWEB’S PETITION IS PROCEDURALLY DEFECTIVE

OneWeb seeks permission to provide Fixed-Satellite Service (“FSS”) in the United States using a satellite constellation that will reportedly be authorized by the United Kingdom.⁶ As part of its offering, OneWeb proposes providing service to fixed and transportable ground-based user terminals as well as mobile terminals on board aircraft, maritime vessels and land vehicles.⁷ OneWeb’s Petition for Declaratory Ruling does not state what percentage of its offerings will be mobile-based or fixed, or whether OneWeb’s business model depends on its ability to offer mobile services in addition to fixed services. OneWeb’s petition is procedurally defective and should be returned to OneWeb in its entirety.

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.”⁸ 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.⁹ Section 2.106 does not permit Mobile-Satellite Service operations in the band.¹⁰ Despite this limitation, OneWeb proposes offering Mobile-Satellite Service to terminals in motion on-board aircraft, maritime vessels and land vehicles.¹¹ 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

⁵ See *MVDDS 5G Coalition Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service*, Petition for Rulemaking, RM-11768 (filed Apr. 26, 2016) (“Coalition Petition for Rulemaking”).

⁶ Petition for Declaratory Ruling at 7.

⁷ *Id.*, Attach. A at 10.

⁸ 47 C.F.R. § 25.112(a)(2).

⁹ 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.

¹⁰ See 47 C.F.R. § 2.106.

¹¹ See Petition for Declaratory Ruling at 5-6 (“OneWeb’s infrastructure will also support other mobile operations, providing terrestrial, aeronautical, and maritime users with reliable and robust communications connectivity For example, vehicle-mounted terminals will act as LTE/4G mobile hotspots, ensuring organizations and individuals maintain seamless connectivity, even in areas where traditional networks have not been built or have been debilitated.”).

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.¹² 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.¹³ Under section 25.112 of the Commission’s rules, OneWeb’s application – like other defective applications before it – must be dismissed.¹⁴

OneWeb should instead make its request through a petition for rulemaking. Granting OneWeb’s petition would require modifications to the Table of Frequency Allocations to permit mobile NGSO use of the band and changes to the Part 101 rules governing MVDDS coexistence with NGSO FSS, all of which are premised on the *fixed* nature of the NGSO FSS allocation in the 12.2-12.7 GHz band. A rulemaking proceeding would allow the Commission to address any changes in an inclusive manner and in a way that fully considers the interests of all stakeholders in the band.¹⁵

II. CONDITIONS ARE A NECESSARY PREREQUISITE TO A COMMISSION GRANT OF THE ONEWEB PETITION

If the Commission is nevertheless considering granting the OneWeb petition on the merits, conditions, at a minimum, are needed to prevent prejudice to the Coalition Petition for Rulemaking and to prohibit OneWeb from acting outside of the Commission’s rules. The Coalition respectfully requests that the Commission incorporate two conditions into any authorization it may ultimately grant in response to OneWeb’s petition.

¹² 47 C.F.R. § 25.112(b)(1).

¹³ 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).

¹⁴ 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).

¹⁵ See *New DBSD Satellite Services G.P., Debtor-in-Possession, TerreStar License Inc., Debtor-in-Possession Requests for Waivers and Modified Ancillary Terrestrial Component Authority*, Order, 27 FCC Rcd 2250, 2261-62 ¶ 29 (2012) (holding that changing the use of a band is most appropriately undertaken in the context of a rulemaking).

A. OneWeb’s authorization is subject to any MVDDS rule changes the FCC may adopt in the future.

The Commission has adopted qualifying conditions specifically to prevent prejudice to an ongoing rulemaking proceeding.¹⁶ Here, the Coalition recommends adoption of the following condition to prevent prejudice to the Commission’s review of policies related to the 12.2-12.7 GHz band:

This authorization is conditioned upon rule changes related to the 12.2-12.7 GHz band, including the outcome of the MVDDS 5G Coalition Petition for Rulemaking to Permit MVDDS Use of the 12.2-12.7 GHz Band for Two-Way Mobile Broadband Service (RM-11768). This authorization is without prejudice to any action the Commission deems appropriate in RM-11768 or any other related proceedings. The OneWeb System shall operate in compliance with any pertinent rule requirements subsequently adopted by the Commission.

B. OneWeb may not provide any mobile or transportable service under its authorization.

As the Coalition has maintained since OneWeb filed its petition, OneWeb cannot operate mobile services using the 12.2-12.7 GHz band without first seeking a waiver of the Commission’s rules. OneWeb has refused to seek a waiver, despite representations in its Petition for Declaratory Ruling that OneWeb wants to provide mobile services. The Coalition recommends adoption of the following condition to avoid any confusion about the rights and limitations of OneWeb’s authorization as it related to mobile services:

WorldVu Satellites Limited d/b/a OneWeb is authorized to operate up to 4,000 blanket licensed earth stations in the contiguous United States, Hawaii, Puerto Rico and/or the U.S. Virgin Islands to communicate with OneWeb's NGSO satellite system licensed by the United Kingdom. This authorization is for blanket licensed fixed earth stations on land only and does not cover off-shore or mobile platforms or earth stations in motion. OneWeb shall not provide mobile-satellite service, portable stations or facilities-based or resale service that meets the definition, or is the functional equivalent of, a commercial mobile radio service. For purposes of this condition, the definition of a commercial mobile radio service is set forth in Section 332(d) of the Communications Act and Section 20.3 of the Commission’s rules, and includes any service marketed as a mobile service.

¹⁶ See FCC International Bureau Satellite Earth Station Condition/Provision Text Listing at Code 5921, <http://bit.ly/2dHZLY1> (last visited Oct. 21, 2016) (“FCC IB Conditions List”) (conditioning authorization on the final outcome of Commission action in a Petition for Rulemaking filed by Spacenet, Inc.).

The Commission has previously adopted conditions limiting the number of blanket-licensed earth stations as part of a service authorization and should adopt the same approach here.¹⁷

* * * *

OneWeb's Petition for Declaratory Ruling is procedurally defective and should be denied. OneWeb should not be permitted to receive an authorization for an unlimited number of fixed stations – much less an unlimited number of portable or mobile stations – that would effectively preclude MVDDS licensees from deploying 5G mobile broadband services. Imposing tailored conditions on any OneWeb authorization would afford the Commission an opportunity to review the relative costs and benefits of different types of service offerings in the 12.2-12.7 GHz spectrum. The Commission, not OneWeb, should determine the highest and best use of the 12.2-12.7 GHz band.

Respectfully submitted,

MVDDS 5G Coalition

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¹⁷ See FCC IB Conditions List at Code 6652 (limiting O3b's authorization to 4,000 blanket-licensed earth stations).

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