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February 21, 2020

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: HNS License Sub, LLC
IBFS File Nos. SES-LIC-20170807-00877, SES-LIC-20170807-00882, SES-LIC-20170807-00888, SES-LIC-20170807-00891, SES-LIC-20170807-00893, SES-LIC-20170807-00894, SES-AMD-20190221-00283, SES-AMD-20190221-00299, SES-AMD-20190221-00302, SES-AMD-20190221-00305, SES-AMD-20190221-00307, SES-AMD-20190221-00309
Call Signs: E170152, E170157, E170163, E170166, E170168, E170169

Dear Ms. Dortch:

The Commission should not waive 47 C.F.R. § 25.136(a)(4)(iii) to allow HNS License Sub, LLC (“Hughes”) to deploy earth stations that would use the 28 GHz band and preclude Verizon from deploying 5G service along major roadways in Santa Clara, CA; Rapid City, SD; Simi Valley, CA; Rifle, CO; Missoula, MT; and Bismarck, ND (collectively, “Noncompliant Areas”).¹

Verizon currently holds 28 GHz licenses in each of the Noncompliant Areas and intends to deploy 5G service using those licenses to satisfy its buildout requirements. In particular, grant of Hughes’ requested waivers to violate the rule standards would interfere

¹ Verizon reserves the right to object to the remaining 14 locations and does not concede that they are in the public interest. Those locations have call signs E170151, E170153-E170156, E170158-E170162, E170164, E170165, E170167, and E170170. The file numbers are SES-LIC-20170807-0876, SES-LIC-20170807-00878 through SES-LIC-20170807-00881, SES-LIC-20170807-00883 through SES-LIC-20170807-00887, SES-LIC-20170807-00889, SES-LIC-20170807-00890, SES-LIC-20170807-00892, SES-LIC-20170807-00895, SES-AMD-20190221-00282, SES-AMD-20190221-00284 through SES-AMD-20190221-00285, SES-AMD-20190221-00288, SES-AMD-20190221-00293 through SES-AMD-20190221-00298, SES-AMD-20190221-00303, SES-AMD-20190221-00304, SES-AMD-20190221-00308, and SES-AMD-20190221-00310.

with Verizon's 5G operations and impair its ability to use 28 GHz spectrum in the Noncompliant Areas. In fact, Verizon would not be able to deploy 5G service using 28 GHz spectrum in those areas if the waivers are granted, harming customers who travel across the impacted major roadways and impeding Verizon's ability to serve customers in those areas and meet its build out requirements.

Hughes concedes that its applications for the Noncompliant Areas do not comply with 47 C.F.R. § 25.136(a). As a secondary user of the 28 GHz spectrum, Hughes may use that spectrum for FSS only if it also holds the UMFUS license for the area (it does not), is using an earth station that obtained authorization through an application granted or filed before July 14, 2016 (it is not), or it meets "all of the following criteria" including that the area in which the earth station generates a PFD "shall not cross any . . . Interstate, Other Freeway[] and Expressway[], or Other Principal Arterial" (it does not).² Hughes acknowledges that even the latest 28 GHz PFD contours that it filed on January 31, 2020 – which differ materially from those in Hughes' May 21, 2019 response to the International Bureau's ("Bureau") inquires,³ and which also differ materially from those in Hughes' initial application – cross roadways referenced in § 25.136(a)(4)(iii) in the Noncompliant Areas.

In the *Spectrum Frontiers Order*, Commission excluded new earth stations that generate a PFD that infringes on major roadways because it recognized that these are "areas where we could expect to have high demand for wireless services."⁴ Allowing new earth stations in those areas of high demand would hamper the delivery of new 5G services provided over 28 GHz spectrum. In denying satellite operators' requests for rehearing of the standards in the *Spectrum Frontiers Order*, the Commission cited the importance of leaving this spectrum available to "support vital new terrestrial services on roads."⁵ The

² 47 C.F.R. § 25.136(a) (emphasis added).

³ For example, the current PFD contour for Santa Clara is smaller – and differently shaped – from the PFD contour that Hughes submitted for Santa Clara on May 21, 2019. Hughes offers no explanation for the change in shape and size. Nor does it explain how its current, smaller contour captures a larger population (781.7) than its prior, larger contour (28.73).

⁴ Report and Order and Further Notice of Proposed Rulemaking, *Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, 31 FCC Rcd 8014, ¶ 54 (2016) ("*Spectrum Frontiers Order*").

⁵ Second Report and Order, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, and Memorandum Opinion and Order, *Use of Spectrum Bands Above 24 GHz for*

Commission specifically noted that the “current need for wireless services along transit routes is clear” – including for such uses as “navigation” – and that the “demand is likely to increase with advances in technology.”⁶ The Commission clarified the types of roads subject to “this prohibition,” but continued to “restrict[] earth station interference zones from infringing upon” those roads.⁷ The Commission also recognized that this and the other restrictions it adopted still leave “FSS operators [with] great flexibility in selecting earth station locations that meet their needs.”⁸

There is no basis to waive 47 C.F.R. § 25.136(a)(4)(iii) to allow Hughes to deploy earth stations that would infringe on the use of 5G by customers driving on major roadways in the Noncompliant Areas. The Commission’s rules allow for waiver only for “good cause.”⁹ The D.C. Circuit held long ago that good cause exists only where the Commission can: (1) “explain why deviation better serves the public interest” than enforcement of the regulation, and (2) “articulate the nature of the special circumstances [justifying the waiver] to prevent discriminatory application and to put future parties on notice.”¹⁰ As the Commission recently reiterated in a decision applying the D.C. Circuit’s standard and denying a waiver request, good cause exists to waive a requirement only “where the particular facts make strict compliance inconsistent with the public interest.”¹¹

Those facts do not exist here. As the Commission recognized in the *Spectrum Frontiers Order*, using 28 GHz spectrum for 5G services is in the public interest.¹² The Commission explicitly and repeatedly reiterated that FSS uses are secondary to mobile uses, including 5G.¹³ The waivers Hughes seeks would effectively invert that hierarchy,

Mobile Radio Services, 32 FCC Rcd 10988, ¶ 130 (2017) (“*Spectrum Frontiers Reconsideration Order*”).

⁶ *Id.*

⁷ *Id.* ¶ 131.

⁸ *Spectrum Frontiers Order* ¶ 55.

⁹ 47 C.F.R. § 1.3.

¹⁰ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹¹ Notice of Proposed Rulemaking and Order, *Spectrum Horizons*, 33 FCC Rcd 2438, ¶ 92 (2018).

¹² See, e.g., *Spectrum Frontiers Order* ¶¶ 1, 7, 15, 27.

¹³ See, e.g., *id.* ¶¶ 62-64.

making FSS the primary use along the major roadways near Hughes' proposed earth stations. The Commission's rules give Hughes "great flexibility" in selecting earth station locations.¹⁴ Hughes identifies no reason why it could not take advantage of that flexibility and revise its proposals a fourth time so that it complies with § 25.136(a) in full in the Noncompliant Areas. Strict compliance with § 25.136(a)(4)(iii) furthers the public interest in 5G deployment.

Moreover, the justifications that Hughes offers for the requested waivers fail. First, Hughes asserts that the linear distance of interference is relatively short – though as long as 0.3 miles – and the areas are lightly populated. Hughes thus incorrectly suggests that lightly populated areas do not need 5G services. And it ignores that 5G service will be used for navigation, as well as communications, by passengers in transit. Interference from Hughes' proposed new earth stations will prevent the use of 5G for those purposes while people travel across major roadways in the Noncompliant Areas. Even short duration disruptions can affect navigation or interrupt emergency communications. Hughes also does not articulate any specific rule that would satisfy the second prong of the good cause analysis by providing notice of the special circumstances that justify waiver here and could be applied uniformly going forward. The Commission also carefully tailored its prohibition on interference with major roadways to three types of roads.¹⁵ Had the Commission thought a *de minimis* exception was warranted, it would have adopted one and defined the extent to which such interference would qualify as *de minimis*. It did not do so.

Second, Hughes asserts that, at three of the sites, its new earth station would be collocated with an earth station that meets the grandfathering criteria in § 25.136(a)(2)-(3). But the Commission grandfathered "existing 28 GHz FSS earth stations . . . under the terms of their existing authorizations."¹⁶ And the Commission expressly rejected the request of EchoStar, Hughes, and Inmarsat that the Commission allow the placement of additional earth station antennas at grandfathered 28 GHz earth station sites.¹⁷ Indeed, they made the same argument there – that expansion would have little effect on new 5G operators

¹⁴ *Id.* ¶ 55.

¹⁵ See *Spectrum Frontiers Reconsideration Order* ¶ 131.

¹⁶ *Spectrum Frontiers Order* ¶ 59.

¹⁷ See *Spectrum Frontiers Reconsideration Order* ¶¶ 140-141.

which will have to account for interference from the existing grandfathered earth station¹⁸ – that Hughes repeats in its January 31, 2020 letter. An argument the Commission already rejected cannot constitute good cause for a waiver.

Third, Hughes points to the lack of objections following the Bureau’s August 21, 2019 Public Notice. But Hughes has the burden to show – and the Commission the obligation to find – that good cause exists to waive the Commission’s rules. A lack of objections is not a substitute for the findings required to satisfy the good cause standard. And, in any case, it was not until January 31, 2020 that Hughes first acknowledged the need for a waiver of § 25.136(a)(4)(iii). Hughes’ initial application included a request for various waivers.¹⁹ But those requests notably did *not* mention § 25.136(a)(4)(iii). In fact, when Hughes supplemented its application in May 2019 – materially changing the PFD contours from its initial application – Hughes made no mention of any requests for waivers. Even if the existence of objections were relevant to the good cause analysis, Verizon is now timely objecting to Hughes’ recent, last-minute request for waiver of § 25.136(a)(4)(iii) in the Noncompliant Areas.

Aside from the fact that Hughes’ request fails on the merits, the Bureau lacks delegated authority to grant the requested waiver. The Commission has never granted a waiver from the requirements in § 25.136(a). Thus, Hughes’ waiver request “[c]annot be resolved” in its favor “under outstanding precedents and guidelines.”²⁰ As shown above, those precedents include the tailoring of the major roadway prohibition without adopting a *de minimis* exception and the rejection of the claim that FSS providers should be permitted to collocate additional antennas at grandfathered locations. Only the full Commission – which denied previous requests to eliminate or to limit further the prohibition on earth stations that infringe upon major roadways – could find that good cause exists to waive the carefully tailored prohibitions in 47 C.F.R. § 25.136(a)(4)(iii).

¹⁸ See EchoStar/Hughes/Inmarsat Reconsideration Petition at 23, GN Docket No. 14-177 *et al.* (Dec. 14, 2016).

¹⁹ See Attach. 1 at 7 & Ex. C.

²⁰ 47 C.F.R. § 0.261(b)(1)(iii).

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For these reasons, the Bureau should deny Hughes's applications for the Noncompliant Areas. Hughes fails to satisfy the requirements in § 25.136(a) for the licensing of additional 28 GHz earth stations and there is no good cause for a waiver. Denial would ensure that 5G services can be provided in the Noncompliant Areas using 28 GHz spectrum.

Finally, on Friday, February 14, 2020, Catherine Hilke and Daudeline Meme of Verizon communicated by telephone with Jose Albuquerque and Kerry Murray of the International Bureau and conveyed several of the arguments laid out above.

Sincerely,

/s/

Gregory M. Romano

cc: Jose Albuquerque
Kerry Murray
Karl Kensinger
Paul Blais
Kathryn Medley
Kal Krautkramer
Jennifer A. Manner
Kimberly M. Baum