

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Service Rules for Advanced Wireless
Services in the 2000-2020 MHz and 2180-
2200 MHz Bands

WT Docket No. 12-70

Fixed and Mobile Services in the Mobile
Satellite Service Bands at 1525-1559 MHz
and 1626.5-1660.5 MHz, 1610-1626.5 MHz
and 2483.5-2500 MHz, and 2000-2020 MHz
and 2180-2200 MHz

ET Docket No. 10-142

Service Rules for Advanced Wireless
Services in the 1915-1920 MHz, 1995-2000
MHz, 2020-2025 MHz, and 2175-2180 MHz
Bands

WT Docket No. 04-356

**COMMENTS
OF THE
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EXECUTIVE SUMMARY

CCIA supports the Commission's efforts to make additional spectrum available for mobile broadband use. The Commission's proposed rules grant flexibility for terrestrial operations in the MSS spectrum bands and will prove effective in freeing up much-needed spectrum for mobile broadband.

However, Commission's proposed construction timetable and penalties are unrealistic and unnecessarily punitive. The Commission should work with stakeholders to reach agreement on a realistic construction benchmarks for MSS license holders and to establish fair and effective penalties for noncompliance.

Finally, the Commission should expedite this rulemaking so that MSS spectrum is available for mobile broadband use as soon as possible so that licensees may begin to deploy their networks and inject much needed competition into the mobile broadband marketplace.

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The Computer & Communications Industry Association (“CCIA”),¹ pursuant to the Federal Communication Commission’s (“Commission”) March 21, 2012 Notice of Proposed Rulemaking and Notice of Inquiry (“NPRM”),² files these Comments regarding the Commission’s proposed rules to increase the Nation’s supply of spectrum available for the provisioning of mobile broadband services “by removing unnecessary barriers to flexible use of spectrum currently assigned for Mobile Satellite Service (“MSS”) in the 2 GHz band.”³ CCIA supports the Commission’s efforts to increase the Nation’s supply of spectrum for mobile broadband use and applauds the Commission’s efforts to meet the goals set forth in the *National Broadband Plan*.⁴ However, with regard to the proposed build-out timetable and penalties for failure to meet those requirements, CCIA urges the Commission to adopt a less draconian build-out schedule and penalties that are less severe than the complete termination of a licensee’s

¹ CCIA is an international nonprofit membership organization representing companies in the computer, Internet, information technology, and telecommunications industries. Together, CCIA’s members employ nearly half a million workers and generate approximately a quarter of a trillion dollars in annual revenue. CCIA promotes open markets, open systems, open networks and full, fair and open competition in the computer, telecommunications and Internet industries.

² *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Docket No. 12-70, *Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5 MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz*, ET Docket No. 10-142, *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 04-356, *Notice of Proposed Rulemaking and Notice of Inquiry*, FCC 12-32 (Mar. 21, 2012) (“2 GHz NPRM”)

³ *Id.* at 3 ¶ 1.

⁴ *See* FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN 84-85, 87-88 (2009) (“NATIONAL BROADBAND PLAN”) (recommending the Commission make 500 megahertz of spectrum available for broadband use within the next ten years, of which 300 MHz should be available for mobile use within five years, and accelerate terrestrial deployment in 90 megahertz of MSS).

spectrum license authorizations. CCIA believes that the proposed requirements and penalties will not serve the Commission's goal of promoting competition in the wireless market,⁵ and will actually harm consumers, investment, and innovation in the mobile broadband market by creating disincentives for companies considering entering the marketplace.

Further, CCIA urges the Commission to expedite its rulemaking process so that licensees have certainty regarding their rights and obligations under the Commission's rules. Completion of this rulemaking by Fall 2012 will allow one licensee, DISH Network Corporation ("DISH"), to begin to quickly build-out and deploy its planned mobile broadband network.⁶

I. CCIA SUPPORTS THE COMMISSION'S EFFORTS TO INCREASE THE NATION'S SUPPLY OF SPECTRUM AVAILABLE FOR MOBILE BROADBAND

CCIA applauds the Commission's proposed rulemaking and its efforts to make additional spectrum available for mobile broadband. CCIA supports the Commission's efforts to provide more spectrum for mobile broadband, which will encourage market entry by new competitors in the mobile space. The Commission's proposed rules, if adopted, will help it achieve these goals

⁵ See *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, WT Docket No. 09-66, Fourteenth Report, FCC 10-81, 5 ¶ 1 (May 20, 2010) ("*Fourteenth Report*") ("[p]romoting competition is a fundamental goal of the Commission's policymaking.").

⁶ See WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356, Comments of DISH Network Corporation, at 1-2 (May 17, 2012) ("Comments of DISH Network") (noting that DISH will "bring a new and vibrant mobile broadband and satellite service to American consumers.").

A. The Commission’s Proposed Rulemaking Will Help it Achieve its Goal of Freeing Up Additional Spectrum for Mobile Broadband

Freeing up additional spectrum for mobile broadband use has been a long held goal of the Commission. The Commission’s proposed rulemaking, once adopted, will help the Commission take steps toward achieving the goals set forth in the *National Broadband Plan*.

As the NPRM notes, rapid adoption of data intensive devices and the continued deployment of new, high-speed networks have driven more intensive use of America’s mobile broadband networks. The explosion of mobile data traffic has created an urgent need for additional network capacity if Americans are to fully realize the potential of mobile broadband services and technologies. This effort will require identifying and making suitable spectrum available for mobile broadband use.⁷

To address the Nation’s spectrum needs the *National Broadband Plan* called on the Commission to make 500 megahertz of spectrum available for broadband use within ten years, and for 300 megahertz of that spectrum to be available for mobile broadband use within five years. And the *National Broadband Plan* specifically called on the Commission to “accelerate terrestrial deployment in 90 megahertz of MSS spectrum,” and recommended the Commission “add a primary ‘mobile’ (terrestrial) allocation to the S-Band ... which will provide the option of flexibility to licensees to provide stand-alone terrestrial services using the spectrum.”⁸

⁷ 2 GHz NPRM, at 6-7 ¶ 10 (citing FEDERAL COMMUNICATIONS COMMISSION, STAFF TECHNICAL PAPER, MOBILE BROADBAND: THE BENEFITS OF ADDITIONAL SPECTRUM, at 26 (Oct. 2010); COUNCIL OF ECONOMIC ADVISORS, THE ECONOMIC BENEFITS OF NEW SPECTRUM FOR WIRELESS BROADBAND, at 5 (Feb. 2012).).

⁸ NATIONAL BROADBAND PLAN, at 84-85, 87-88.

CCIA has also previously advocated for the Commission provide flexibility to allow for terrestrial deployment on the 2 GHz MSS spectrum band. In 2011 CCIA filed Reply Comments requesting the Commission grant the Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority filed by DBSD Satellite Services G.P. and TerreStar Licensee Inc., along with DISH so that DISH could begin deployment of its proposed 4G LTE mobile broadband network.⁹ Although that request was ultimately denied, CCIA cheers the Commission's efforts to quickly move forward with a rulemaking to remove unnecessary impediments to terrestrial deployment of MSS spectrum in the 2 GHz band and to allow DISH to commence build-out of its planned network. The Commission's proposed rules, once adopted, will quickly allow DISH to utilize 40 MHz of spectrum for mobile broadband use and help the Commission move toward meeting the goals of the *National Broadband Plan*.

B. The Commission's Proposed Rulemaking Will Help it Achieve its Goal of Promoting Wireless Competition

Previously the Commission has stated its goal to promote competition within the mobile marketplace.¹⁰ The Commission's proposed rules will free up additional spectrum for mobile broadband services, allowing potential new market entrants to access this critical input resource and deliver new and much needed competition and innovation to the mobile broadband marketplace. Additionally, the proposed rules will allow the immediate entry of DISH as a new entrant in the mobile broadband market.

⁹ *New DBSD Satellite Service G.P., Debtor-in-Possession, and TerreStar Licensee Inc., Debtor-in-Possession, Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority*, IB Docket No. 11-149, Reply Comments of the Computer & Communications Industry Association (Nov. 3, 2011).

¹⁰ *Fourteenth Report*, at 5 ¶ 1.

In its two previous reports on wireless competition, the Commission has been unable to conclude that the market for mobile services is competitive.¹¹ The Commission's proposed rulemaking, once approved, will facilitate much-needed competition with the near-immediate entry of DISH into the mobile broadband market as a competitive alternative to the existing carriers. Upon approval of these rules granting it the necessary flexibility to build out its terrestrial base stations, DISH will begin deployment of its proposed mobile broadband network. CCIA supports the Commission's efforts to continue to increase competition in the mobile broadband market and urges the Commission to quickly approve rules granting DISH the flexibility it needs to begin deploying its network.

II. THE COMMISSION'S PROPOSED TIMETABLE FOR BUILD-OUT AND PROPOSED PENALTIES FOR FAILURE TO COMPLY WITH ITS TIMETABLE ARE OVERLY AGGRESSIVE

While CCIA supports the Commission's efforts to free up additional spectrum for mobile broadband use and to spur additional competition in the mobile broadband market, CCIA believes that the Commission's proposed build-out requirements are far too draconian when considering the barriers to market entry and other challenges that licensees will face upon attempting to enter the mobile marketplace. Further, CCIA also believes the Commission's proposed penalties for a licensee's failure to meet the Commission's proposed build-out requirements are far too punitive. CCIA urges the Commission to work with DISH and other potential licensees to reach agreement on fairer, more realistic, and less punitive build-out requirements and penalties. CCIA fears that such stringent requirements and penalties may serve

¹¹ See *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Services*, WT Docket No. 10-133, Fifteenth Report, FCC 11-103, 5 ¶ 2, 28 ¶ 15 (June 27, 2011) ("*Fifteenth Report*"); *Fourteenth Report*, at 21-22 ¶ 6, 199 ¶ 368

to undermine the benefits of the Commission’s proposed rules – incentivizing additional investment and competition in the mobile broadband marketplace.

A. The Commission’s Proposed Build-Out Timetable is Draconian

CCIA believes that the Commission’s proposed build-out requirements are overly aggressive and will undermine the Commission’s goals of utilizing additional spectrum for mobile broadband use and spurring investment and competition in the mobile broadband market. The Commission has proposed Interim and Final build-out requirements for AWS-4 spectrum; however, the Commission fails to cite precedent for these requirements other than to mention AT&T’s proposal that the Commission require build-out conditions consistent with those imposed on LightSquared.¹² The draconian Interim benchmark requires that “within three years, an AWS-4 licensee shall provide signal coverage and offer service to at least thirty percent of their total AWS-4 population.” And the Final Build-out Requirement directs licensees to “provide signal coverage and offer service to at least seventy percent of the population in each of its license authorization areas” within seven years.¹³

While CCIA believes the Commission should take steps to ensure that licensed spectrum is put to use as quickly and efficiently as possible, the proposed build-out timetable is overly aggressive and may prove difficult to comply with, even for the licensees making a good-faith effort to meet the Commission’s benchmarks. To launch and deploy a wireless network a new

¹² 2 GHz NPRM, at 30 ¶ 91 (citing IB Docket No. 11-149, Letter from Joan Marsh, Vice President – Federal Regulatory, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, at 2 (Jan. 26, 2012).).

¹³ 2 GHz NPRM, at 30 ¶ 92.

market entrant must invest hundreds of millions, or even billions of dollars.¹⁴ In addition to procuring spectrum license authorizations, potential carriers must acquire or lease base station sites; construct base stations; contract with device manufacturers to build and test devices to operate on the carriers' licensed spectrum; reach agreements for interconnection costs, backhaul transport, and voice and data roaming services; and market and distribute its mobile services and devices.¹⁵ This undertaking is incredibly difficult, which explains why the nation's largest incumbent cable companies, which bought AWS spectrum as recently as 2006 with the intention of building their own mobile voice and data networks,¹⁶ are now attempting to sell that spectrum to Verizon Wireless rather than build their own mobile networks.¹⁷

CCIA does not oppose the inclusion of build-out requirements in the adopted rule. In fact, such requirements are useful in achieving the Commission's aims. However, CCIA

¹⁴ See *Fifteenth Report*, at 53-54 ¶ 63 (“A new entrant would ... need to invest tens or hundreds of millions of dollars in capital expense for a regional network (depending on the size of the regions) and billions of dollars for a national network.”).

¹⁵ *Id.* at 60.

¹⁶ See *Application of Cellco Partnership d/b/a Verizon Wireless and SpectrumCo, LCC for Consent to Assign Licenses*, WT Docket No. 12-4, File No. 0004993617, Exh. 1, 2, 20-22 (Dec. 16, 2011) (explaining that SpectrumCo, LLC (comprised of Comcast Corp., Time Warner Cable Inc., and Bright House Networks, LLC), which purchased spectrum licenses in 2006, concluded that after taking multiple steps to develop its AWS spectrum that “the financial resources required to build a wireless are enormous,” it would need to acquire additional spectrum, and there is incredible cost and complexity associated with entering the mobile marketplace as a facilities-based provider.); *Application of Cellco Partnership d/b/a Verizon Wireless and Cox TMI Wireless, LCC for Consent to Assign Licenses*, WT Docket No. 12-4, File No. 0004996680, Exh. 1, 3, 18-19 (Dec. 21, 2011) (explaining that Cox TMI Wireless, which purchased spectrum licenses in 2006, “concluded that it was uneconomic to provide 3G mobile wireless services over its own network infrastructure and announced that it would begin decommissioning the facilities it had constructed, a process that remains ongoing.”)

¹⁷ See *Cellco Partnership d/b/a Verizon Wireless, SpectrumCo, LLC and Cox TMI Wireless, LLC Seek FCC Consent to the Assignment of AWS-1 Licenses*, Public Notice, DA 12-67 (Jan. 19, 2012).

believes that the proposed requirements are overly stringent and will prove difficult for even the best-intentioned licensee to meet. Thus, CCIA urges the Commission to work with DISH and other potential licensees to find an amenable build-out timetable that will spur timely build-out and deployment on licensed MSS spectrum. To achieve the Commission's goals, such a timetable must be realistic given the high costs and barriers to entry in the mobile broadband marketplace.

B. The Commission's Proposed Penalties for Failure to Meet the Proposed Build-Out Requirements are Excessively Punitive

CCIA believes that the Commission's proposed penalties for failure to meet its proposed build-out timetable are unnecessarily punitive. While CCIA recognizes that in order to ensure that its build-out timetable is complied with the Commission must establish consequences for failure to meet its benchmarks, the Commission's proposed penalties are excessively harsh and will likely reduce the likelihood that the proposed rules achieve the Commission's goals of increasing investment and competition in the mobile broadband marketplace.

As discussed above, the Commission's proposed build-out timetable is very stringent and may be difficult to meet for even the most capable licensees. The Commission's proposed penalties for failure to meet those requirements – automatic termination of all license authorizations for failure to meet the AWS-4 Interim Build-out Requirement, and automatic termination of each license authorization area in which a licensee fails to meet the Final Build-out Requirement¹⁸ – are excessively punitive, particularly when taken in combination with the already aggressive build-out timetable.

¹⁸ 2 GHz NPRM, at 31 ¶ 94.

CCIA has noted the high barriers to entry in the mobile marketplace and the steps that a new entrant must take in order to launch a new mobile broadband network. Overly punitive penalties for failure to meet the Commission's construction benchmarks raise the stakes for construction delays and reasonable negotiations such that they will likely dissuade potential competitors from bidding on available MSS spectrum and entering the mobile broadband market.

Not only will the Commission's proposed penalties dissuade new investment and competition in the mobile broadband market, but they will also create uncertainty for customers of the networks that deploy on MSS spectrum. The proposed penalties could cause customers to be stranded should the Commission be forced to administer the proposed penalties and automatically revoke a carriers' license authorizations. Automatic revocation of licenses will harm consumers, and the uncertainty that would be created by the proposed penalties may actually impede enterprise customer adoption of new networks as business customers may decide they cannot abide the uncertainty around whether their carriers' spectrum license authorizations will be automatically revoked at some future date.

The Commission's proposed penalties, particularly when paired with the Commission's aggressive construction timetable, will likely undermine the Commission's aims of increasing investment and competition in mobile broadband, and potentially harm consumers as well. Thus, CCIA urges the Commission to work with DISH and other potential licensees to reach an agreement on a reasonable and effective construction timetable, and on penalties that incentivize timely deployment, rather than dissuading investment.

III. THE COMMISSION SHOULD COMPLETE ITS RULEMAKING AS SOON AS POSSIBLE

CCIA urges the Commission to complete its rulemaking as soon as possible so that DISH network can begin to build-out its proposed mobile broadband network on its 2 GHz MSS spectrum. Failure to complete the rulemaking in a timely fashion will delay DISH's competitive entry into the highly concentrated mobile broadband market and delay the Commission in achieving its aim of increasing competition in that marketplace. Delay is unnecessary, and CCIA requests the Commission expedite this rulemaking for completion as soon as possible.

CONCLUSION

CCIA applauds the Commission's efforts to free up additional spectrum for mobile broadband use and its goals of increasing investment and competition in the mobile broadband marketplace. These rules will likely be successful in helping the Commission achieve its goals. However, CCIA requests the Commission work with DISH and other potential licensees to address the overly aggressive and punitive construction timetable and penalties for failure to meet the Commission's construction benchmarks. Benchmarks and penalties should further the Commission's goals, but CCIA believes that rules as presently written will have the opposite effect. Finally, CCIA urges the Commission to complete this rulemaking as soon as possible so that the benefits of this rulemaking may be quickly achieved.

May 17, 2012

Respectfully submitted,

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