

**Communications
Workers of America**
AFL-CIO, CLC

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December 5, 2019

VIA ECFS

Mr. Donald Stockdale
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: WT Docket No. 18-197
ULS File Nos. 0008741236, 0008741420, 0008741603, and 0008741789**

Dear Mr. Stockdale:

On July 26, 2019, DISH Network Corporation (“DISH”) requested modifications to its AWS-4, Lower 700 MHz E Block, AWS H Block, and 600 MHz licenses.¹ On November 5, 2019, the Commission released a Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification (“MO&O”) proposing to modify DISH’s licenses and directing the Wireless Telecommunications Bureau “to make a final public interest determination” after “adequate time for protest has passed under our rules.”² The Communications Workers of America (“CWA”) writes today to urge the Bureau to deny DISH’s requests as inconsistent with the public interest.

In this letter, we make three main points. First, DISH’s request for extensions of construction deadlines until 2025 is flatly inconsistent with Commission precedent denying such extensions in all but extraordinary cases. Second, DISH has already benefited from numerous extensions and has offered no explanation for why it cannot meet its current deadlines. Finally, DISH’s long history of abusing its spectrum resources should not be ignored by the Commission.

¹ See Letter from Jeffrey H. Blum, Senior Vice President, Public Policy and Government Affairs, DISH, to Donald Stockdale, Chief, Wireless Telecommunications Bureau, WT Docket No. 18-197 (July 26, 2019) (“DISH July 26, 2019 Letter”). See also Application for Extension of Time of American H Block Wireless L.L.C., ULS File No. 0008741236 (filed July 26, 2019); Application for Extension of Time of DBSD Corp., ULS File No. 0008741420 (filed July 26, 2019); Application for Extension of Time of Gamma Acquisition L.L.C., ULS File No. 0008741603 (filed July 26, 2019); and Application for Extension of Time of Manifest Wireless L.L.C., ULS File No. 0008741789 (filed July 26, 2019).

² See Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, WT Docket No. 18-197 (November 5, 2019) (“MO&O”), para. 365.

1. The Commission has established a “high hurdle” for extensions of time or waiver of construction requirements and DISH’s requests in this case do not satisfy this standard.

Requests to waive a performance requirement, including specifically requests for an extension of time or waiver of a construction deadline, must “meet a high hurdle even at the starting gate.”³ Such requests are to be considered “in light of Section 309(j) of the Communications Act, which provides that the Commission shall include performance requirements to ensure intensive use of valuable spectrum and to prevent the stockpiling and warehousing of spectrum by licensees.”⁴ Further, it is “settled policy” that extensions are not justified “when the licensee’s failure to construct is due solely to circumstances wholly within the licensee’s control.”⁵ As a result, the Commission has denied numerous requests for extensions, including one as recently as last week.⁶

DISH has repeatedly assured the Commission that it was on track to meet its 2020 deadlines. On June 7, 2018, in a buildout status report to the Commission, DISH stated as follows:

DISH explained that deployment of Phase 1 of the network is expected to be conducted in stages, with the first deployments starting by the end of this year. Among other things, the core network has already been commissioned and installed. Based on what our vendors have indicated, we expect to take delivery of radios for the network in the fall of this year, and we are in the process of identifying and acquiring tower sites. We plan to install radios on towers in an initial wave of markets by the end of this year. Deployment will continue throughout 2019. Standalone 5G standardization work will continue in parallel and, as a result, following the completion of Phase 1, we plan to upgrade and expand the network to full 5G.⁷

On September 21, 2018, DISH represented to the Commission that it would meet its 2020 buildout obligations for its AWS-4, E Block and H Block licenses: “We currently anticipate

³ Requests of Three Licensees of 22 Licenses in the Multichannel Video and Data Distribution Service for Extension of Time to Meet the Final Buildout Requirement for Providing Substantial Service under Section 101.1413 of the Commission’s Rules, 33 FCC Rcd 10757, 10760, para. 10 (2018) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969)).

⁴ *Id.*

⁵ In re Skybridge Spectrum Foundation, 33 FCC Rcd 8138, 8145, para. 16 (2018) (citing *MariTEL, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 14074, 14079, para. 9 (2007)).

⁶ See, e.g., In re Commnet Supply LLC, Request for Waiver and Extension of PCS Construction Requirements, Call Sign WQGH652, ULS File Nos. 0003818184, 0003805569 (Adopted Nov. 25, 2019, Released Nov. 27, 2019), available at <https://docs.fcc.gov/public/attachments/DOC-361068A1.docx>; Requests of Three Licensees of 22 Licenses in the Multichannel Video and Data Distribution Service for Extension of Time to Meet the Final Buildout Requirement for Providing Substantial Service under Section 101.1413 of the Commission’s Rules, 33 FCC Rcd. 10757 (2018); F.C.C. Letter, Mr. Thomas K. Kurrian, 32 FCC Rcd 6489 (2017); In re PCS Partners, L.P. et al., 32 FCC Rcd 556 (2017).

⁷ Ex Parte Letter from Jeffrey H. Blum, Senior Vice President, Public Policy and Government Affairs, DISH, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 3 (June 7, 2018).

meeting these buildout obligations.”⁸ Subsequently, on November 27, 2018, DISH represented to the Commission: “while DISH is developing the services to be supported by its NB-IoT network, we currently plan to offer services geared to individual customers, as well as commercial customers, by March 2020.”⁹ It also stated: “The fact that DISH is planning to build out our licensed spectrum through a phased approach in no way undermines our ability to satisfy the 2020 buildout milestones.”¹⁰ In the same letter, DISH claimed that its plans “cannot be changed at this late stage” because “[t]he radios, chipsets, and RF design, among other things, have all been contractually committed and developed. . . .”¹¹

DISH fails to explain why this path is no longer feasible. It does not explain why its buildout plans, which allegedly could not be changed as of a year ago, are now of no consequence. Indeed, this sort of last minute maneuvering to evade buildout obligations seems to be characteristic of DISH.

If DISH were to argue that its business plan has changed because it is subject to the DOJ Proposed Final Judgment,¹² that argument would be unavailing. The Commission’s view is clear that a new business plan doesn’t excuse a licensee from meeting its existing regulatory obligations.¹³ Moreover, the Commission has stated that its MO&O “does not depend on any additional requirements, such as those contained in the DOJ Proposed Final Judgment[.]”¹⁴ Thus, the Commission has not made the MO&O dependent upon DOJ’s proposed remedy – a remedy that violates DOJ’s own merger remedy policies and represents at best wishful thinking about DISH’s ability someday to replace Sprint as an independent fourth wireless competitor.¹⁵

2. DISH has a long history of speculative warehousing of spectrum and failure to meet FCC-imposed buildout deadlines.

DISH’s long history of speculative warehousing of spectrum and failure to meet FCC-imposed deadlines is well known. As T-Mobile commented in a letter to the Bureau in January of this year:

⁸ Letter from Jeffrey H. Blum, Senior Vice President, Public Policy and Government Affairs, DISH, to Donald Stockdale, Chief, Wireless Telecommunications Bureau, at 1 (September 21, 2018).

⁹ Letter from Jeffrey H. Blum, Senior Vice President, Public Policy and Government Affairs, DISH, to Donald Stockdale, Chief, Wireless Telecommunications Bureau, at 4 (November 27, 2018).

¹⁰ *Id.*

¹¹ *Id.* at 6.

¹² Proposed Final Judgment, *United States v. Deutsche Telekom AG et al.*, Case No. 1:19-cv-02232-TJK (D.D.C. July 26, 2019).

¹³ *See, e.g.*, *In re Eldorado Communications, L.L.C.*, 17 FCC Rcd 24613 (2002) (rejecting request for waiver and extension based on licensee’s business decision to deploy a different network technology “with only months remaining before its construction deadline”). The parallels are obvious here, as DISH’s change in business plans are taking place only months before its construction deadline.

¹⁴ MO&O at n. 1304.

¹⁵ Tunney Act Comments of the Communications Workers of America (October 10, 2019), available at <https://www.justice.gov/atr/page/file/1214771/download>.

DISH's purported future plans to upgrade its NB-IoT network to a Fifth Generation ("5G") wireless mobile broadband network after July 2020 do not excuse its failure to satisfy upcoming performance requirements – performance requirements for these bands that it has already missed once. These misses are part of a clear pattern of DISH's lack of commitment to use its wireless spectrum. The Commission should not permit that behavior to continue.¹⁶

As T-Mobile later commented in a March 2019 letter to the Commission, "DISH stands out for its efforts to game the regulatory system" and "has little interest in actually delivering real 5G service."¹⁷

As we detail below, in three separate instances dating back to 2009, DISH acquired spectrum licenses and each time missed the mandated construction deadlines. In fact, DISH has failed to put any of its extensive spectrum holdings to use. Now, DISH seeks approval from the Commission for further extension of its construction deadlines to 2025 – a full 16 years after its initial spectrum acquisition. Under Commission precedent, this negative track record is relevant to DISH's request for further extensions.¹⁸ In fact, it should be dispositive.

700 MHz E Block. In 2008, DISH won in the Lower 700 MHz E Block 168 licenses in auction 73. The licenses were granted in February 2009. The Commission rules for this spectrum block require licensees to construct a wireless network reaching 35 percent of the geographic area of each licensed Basic Economic Area (BEA) by June 2013 and 70 percent of the geographic area of each BEA by 2019.¹⁹ One day before the 2013 deadline, DISH asked the Commission for an extension and easing of build out requirements. The Commission complied, extending the first construction deadline to March 2017, and the second to March 2021, and easing the construction requirements to 40 percent and 70 percent of the population of each BEA. DISH missed the March 2017 deadline, triggering a requirement that DISH build to 70 percent of the population in each BEA by March 7, 2020.²⁰ With this deadline looming, DISH asked the Commission on July 26, 2019 to delay the construction deadline once again, with a requirement to build to 50 percent of the U.S. population by 2023, and to 70 percent of the population in each BEA by 2025.²¹ The 2025 deadline is a full 16 years after DISH acquired the spectrum licenses.

¹⁶ Letter from Steve B. Sharkey, Vice President, Government Affairs, Technology and Engineering Policy, T-Mobile USA, Inc. to Donald Stockdale, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (January 29, 2019) at 2 (footnotes omitted).

¹⁷ See Ex Parte Letter from Nancy J. Victory, counsel for T-Mobile, to Marlene H. Dortch, Secretary, Federal Communications Commission (March 11, 2019), at 1 n.3, available at <https://ecfsapi.fcc.gov/file/1031124977749/March%2011%202019%20Pricing%20ex%20parte.pdf>.

¹⁸ Requests of Three Licensees of 22 Licenses in the Multichannel Video and Data Distribution Service for Extension of Time to Meet the Final Buildout Requirement for Providing Substantial Service under Section 101.1413 of the Commission's Rules, 33 FCC Rcd 10757, 10760, para. 10 (2018).

¹⁹ See 28 FCC Rcd 15122 para. 55, See also 47 CFR 27.14G.

²⁰ *Id.*

²¹ See DISH July 26, 2019 Letter.

AWS-4 Spectrum. In March 2012, DISH acquired the spectrum licenses in the bankruptcy of two satellite companies. In December 2012, the Commission approved DISH's request to use the spectrum for terrestrial wireless, creating the AWS-4 service. In the *AWS-4 Order*, the Commission required DISH to build out to 40 percent of the population in each BEA by March 2017 and to 70 percent of the population in each BEA by March 2020.²² Missing the March 2017 deadline would push the 2020 deadline back to March 2019. DISH subsequently asked for, and the Commission granted, an extension of the 2020 deadline to March 2021, with a push back to March 2020 if the March 2017 deadline was missed.²³ DISH failed to meet the 2017 deadline, and therefore faces a looming March 2020 construction deadline for this spectrum.²⁴ DISH has asked the Commission to delay the construction deadline once again, with the same requirements noted above for the 700 MHz E block (e.g. 50 percent of US population by 2023, and 70 percent of the population in each BEA by 2025).²⁵ The 2025 deadline is a full 13 years after DISH received Commission authority to use the AWS-4 spectrum for terrestrial wireless.

H Block. In 2014, DISH won all the licenses in the H block auction, with construction requirements to serve 40 percent of the population in each license area by April 2018 and 75 percent of the population in each license area by April 2024. Not meeting the first benchmark reduces the license term to April 2022.²⁶ DISH did not meet the 2018 deadline.²⁷ It has asked the Commission to delay the final construction deadline to 2023 and 2025, as noted above, which is 11 years after it acquired the H Block spectrum.²⁸

3. DISH's promises are full of loopholes that point to future gamesmanship.

If the requested extensions were granted, DISH has left itself many outs should it fail (once again) to meet its buildout requirements.²⁹ These include regulatory or legal changes, "unanticipated" supply chain problems, and unspecified other factors "beyond the company's control." In such cases, DISH has requested ex post facto reduction of the metrics it has agreed to meet, further extensions of time, and/or reductions in the contributions it would otherwise be required to make.

DISH is subject to financial penalties in the form of monetary contributions if it fails to meet the proposed new buildout requirements. However, financial analysts have observed that such contributions may be too small and accordingly do little to assure compliance.³⁰

²² 28 FCC Rcd 16787 paras. 187-188. *See also* 27 FCC Rcd 16102.

²³ 28 FCCR 16787 paras. 8, 41-42.

²⁴ 28 FCC Rcd 16787 para. 43; 47 CFR 27.14Q; *see also* License T0272001.

²⁵ DISH July 26, 2019 Letter.

²⁶ 28 FCC Rcd 9483, para. 195, 47 CFR 27.14R.

²⁷ *Id.* License # WQTX200.

²⁸ DISH July 26, 2019 Letter.

²⁹ *See* DISH July 26, 2019 Letter at 6-7.

³⁰ *See, e.g.*, Roger Entner, Industry Voices—Entner: The skinny on the T-Mobile/Sprint/Dish deal, Fierce Wireless (August 2, 2019), <https://www.fiercewireless.com/wireless/industry-voices-entner-sorting-out-good-and-bad-t-mobile-sprint-dish-deal>.

Conclusion.

In 2012, DISH asserted to the Commission that it would become a “disruptive competitor in the wireless market.”³¹ Seven years later, having missed numerous buildout deadlines and finding itself quickly approaching yet another deadline, DISH repeats the same claim. Experience has shown that such claims ring hollow. CWA respectfully submits that the Bureau should deny DISH’s requests for further extensions as inconsistent with the public interest.

Sincerely,

A handwritten signature in black ink that reads "Debbie Goldman". The signature is written in a cursive, flowing style.

Debbie Goldman
Telecommunications Policy and Research Director
Communications Workers of America

³¹ See Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH Network Corporation, to Marlene H. Dortch, Secretary, FCC, ET Docket No. 10-142, et al., at 1 (filed Nov. 8, 2012).