January 15, 2015

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Notice of Ex Parte

IB Docket No. 97-95, Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands

GN Docket No. 14-177, ET Docket No. 95-183, PP Docket No. 93-253, RM-11664, Use of Spectrum Bands Above 24 GHz for Mobile Radio Services

Dear Ms. Dortch:

On October 17, 2014, the Commission released a Notice of Inquiry examining the future use of the bands above 24 GHz.1/ Among the issues raised in the 5G NOI is the potential deployment of the band 38.6 GHz-40 GHz (the “39 GHz Band”), now designated for Fixed Service ("FS") use, for fifth generation ("5G") mobile wireless operations. Straight Path Communications, Inc. ("Straight Path") applauds the Commission’s efforts to make more intensive use of the 39 GHz Band to meet growing demands for mobile wireless capacity and has submitted comments today in response to the 5G NOI.2/ Related to the 5G NOI, the Commission is considering changes to the rules governing satellite operations in the 37.5-42.5 GHz (the “V-Band”), which encompasses the 39 GHz Band, in its pending Third Notice of Proposed Rulemaking.3/ Because these two proceedings address overlapping issues, Straight Path urges

1/ See Use of Spectrum Bands Above 24 GHz for Mobile Radio Services; Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Petition for Rulemaking of the Fixed Wireless Communications Coalition to Create Service Rules for the 42-43.5 GHz Band, Notice of Inquiry, 29 FCC Rcd. 13020 (2014) (“5G NOI”).


3/ See Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
the Commission to: (1) postpone action in the *V-Band Third NPRM* so that its decisions there may be consistent with any actions it takes in response to the *5G NOI* and any follow-up rulemaking proceedings; and (2) freeze applications for new satellite services in the V-Band, until it resolves outstanding issues raised in the *5G NOI*.

**Background**

The Commission released the *V-Band Third NPRM* on November 1, 2010, seeking comment on measures to increase the potential for sharing between FS and Fixed Satellite Services (“FSS”) in the V-Band. Among other things, the Commission proposes coordination procedures for FSS and Fixed operations in the V-Band as well as procedures pursuant to which FSS licensees may raise their power flux density (“PFD”) levels to compensate for “rain fade.”4/ The *V-Band Third NPRM* also consolidated an earlier proceeding relating more generally to the 37-40 GHz band in which the Commission, among other things, proposed service rules for FS operations in the 37.0-38.6 GHz and 42.0-42.5 GHz bands that would substantially conform to the rules already adopted by the Commission for the 39 GHz Band.5/ Finally, in the *5G NOI*, the Commission asks whether existing satellite operations would be compatible with mobile operations if they are permitted in the 39 GHz Band.6/ Comments on the *5G NOI* are due January 15, 2015, and reply comments are due February 17, 2015.

**Discussion**

Straight Path holds a significant number of licenses in the millimeter wave bands and has been engaged in evaluating how it can maximize the full potential of its spectrum holdings for next generation mobile solutions such as 5G. It therefore expects to actively participate in the *5G NOI* proceeding in support of the Commission’s efforts to promote 5G technologies in 39 GHz and other millimeter wave bands. Accordingly, it urges the Commission to postpone action on the *V-Band Third NPRM* until it makes any changes to the 39 GHz Band rules as a result of the *5G NOI*.

To best promote the use of the 39 GHz Band for 5G terrestrial mobile use, the Commission should ultimately designate the band exclusively for fixed and mobile service operations, deleting the primary satellite allocation in the band. First, it is not technically feasible for mobile services to coexist with FSS operations in the same geographic area. Thus, separation of these services would avoid any interference concerns. Second, because there is currently no non-federal satellite use in the V-Band, the public interest would be better served by

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4/ See id. ¶¶ 26-55.

5/ See Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz Bands, Third Notice of Proposed Rulemaking, 19 FCC Rcd. 8232 (2004).

6/ See 5G NOI ¶ 61.
making the spectrum available for terrestrial services, where demand exists. Finally, non-federal FSS operators would still have other parts of the V-Band, among other spectrum bands, available for their operations.

Straight Path’s recommendation to designate the 39 GHz Band exclusively for fixed and mobile service operations, deleting the primary satellite allocation in the band, is consistent with the Commission’s observation in the V-Band Third NPRM that one way to address the rain fade issue would be to limit FSS to a maximum of 1 gigahertz of downlink within the 2.5 gigahertz wide 37.5-40 GHz downlink band.7/ The Commission could, therefore, limit FSS operations to the 37.5-38.5 GHz band, with the increased PFD level, and allocate the 39 GHz Band exclusively for fixed and mobile services.

If the Commission takes those actions, it may make moot two of the proposals in the V-Band Third NPRM. As noted above, in that proceeding, the Commission proposes coordination procedures for FSS and FS operations as well as procedures under which FSS licensees may raise their PFD levels to compensate for rain fade. However, according to the FCC’s International Bureau (“Bureau”) licensing database, there are no non-federal satellite operations today in the 37.5-40.0 GHz band. If, as Straight Path proposes, the Commission freezes the acceptance of applications for FSS operations in that band, there will be no requirement for coordination procedures or PFD limits in the 39 GHz Band. Even if the Commission does not freeze acceptance of applications, but makes the FSS allocation in the band secondary, the coordination and rain fade issues may be addressed differently than contemplated in the V-Band Third NPRM. Accordingly, the Commission should take no action in response to the V-Band Third NPRM until it adopts any new rules governing fixed and mobile 5G operations in the 39 GHz Band.

Similarly, the Commission should refrain from granting any new applications for satellite operations in the V-Band pending the outcome of the 5G NOI proceeding. As, for example, the Wireless Telecommunications Bureau (“WTB”) has recognized in similar circumstances, it is important to maintain a stable spectral landscape as the Commission considers changes to a particular spectrum band.8/ Indeed, in anticipation of the FCC adopting licensing and technical rules for Fixed operations in the 39 GHz Band, the WTB released an order freezing the acceptance of new applications for 39 GHz frequency assignments.9/ Because new applications

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7/ See V-Band Third NPRM ¶ 55.
9/ See Petition for Amendment of the Commission’s Rules Regarding the 37.0-38.6 GHz and 38.6-40 GHz Bands, Order, 11 FCC Rcd. 1156 (1996); Amendment of the Commission’s Rules Regarding the
for satellite operations could impact the spectral environment not only for the V-Band, but also for the 39 GHz Band, the Commission should likewise freeze the acceptance of these applications.

Notably, neither of these actions would adversely affect existing licensees. As noted above, there is currently no non-federal satellite use of the V-Band. While the Commission observed in the 5G NOI that Hughes Network Systems, LLC (“Hughes”) holds a non-federal FSS authorization to provide space-to-Earth transmissions in the 39 GHz Band,10/ Hughes surrendered its authorization in August 2014.11/ Accordingly, there is no reason why the Commission should not take the actions outlined herein.

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Pursuant to Section 1.1206(b)(2) of the Commission’s rules, an electronic copy of this letter is being filed for inclusion in the above-referenced dockets. Please address any questions regarding the foregoing to the undersigned.

Respectfully submitted,

/s/ Russell H. Fox

Russell H. Fox
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Counsel for Straight Path Communications, Inc.

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37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz, Notice of Proposed Rule Making and Order, 11 FCC Rcd. 4930, ¶ 2 (1995).

10/ See 5G NOI ¶ 60.

11/ See Letter from Jennifer A. Manner, Vice President, Regulatory Affairs, Hughes, to Ms. Marlene H. Dortch, Secretary, FCC, IBFS File No. SAT-LOA-20111223-00248 (filed Aug. 1, 2014).