

December 6, 2012

**Via Electronic Submission**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW, Room TW-A325  
Washington, DC 20554

Marc S. Martin  
D 202.778.9859  
F 202.778.9100  
marc.martin@klgates.com

**Re: *Notice of Ex Parte Communication***  
*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, 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*

Dear Ms. Dortch,

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, Sprint Nextel Corporation ("Sprint") submits this letter summarizing a meeting between Sprint and Commission staff on December 5, 2012. Sprint was represented by Lawrence Krevor, Vice President, Government Affairs; Richard Engelman, Director, Government Affairs; Rafi Martina, Counsel, Government Affairs; Mark Lipford (by phone), Director, Global Standards and Ecosystem Development; and Marc Martin of K&L Gates LLP, counsel to Sprint. Sprint met with Renee Gregory, Legal Advisor to Chairman Julius Genachowski; Blaise Scinto, Peter Daronco, Jeremy Marcus, Chris Helzer, Paul Malmud, Janet Young, Mathew Pearl, Kevin Holmes, John Leibovitz, Tom Peters (by phone), Brian Regan, and Ruth Milkman of the Wireless Telecommunications Bureau; and Julius Knapp and Michael Ha of the Office of Engineering & Technology. Shortly after this meeting, Marc Martin spoke separately by phone with Angela E. Giancarlo, Chief of Staff and Senior Legal Advisor to Commissioner Robert M. McDowell, David Goldman, Senior Legal Advisor to Commissioner Jessica Rosenworcel, and Louis Peraertz, Legal Advisor to Commissioner Mignon Cyburn, respectively, during which he briefly described the meeting earlier in the day with the Commission staff, consistent with the summary below.

Sprint's presentation in the December 5<sup>th</sup> meeting as well as in this *ex parte* notice is based on recently available information, including the Chairman's announcement on November 20, 2012, of a proposed Report and Order and Notice of Proposed Rulemaking in this proceeding, subsequent press reports of the Chairman's proposal, and DISH's subsequent "new

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proposal,” communicated orally to Sprint the evening of November 29<sup>th</sup> and as set forth in its December 3<sup>rd</sup> *ex parte* filing in this proceeding.<sup>1</sup> Sprint’s comments are based on an understanding that the Chairman’s proposal would: 1) permit AWS-4 user equipment to operate throughout the 2000-2020 MHz band, but with reduced power requirements when operating between 2000-2005 MHz; 2) require that AWS-4 user equipment limit out-of-band emissions (“OOBE”) to -40 dBm/MHz for frequencies at and below 2000 MHz (which includes the H Block, Sprint’s G Block, and the PCS band); and 3) propose that H Block base stations operating at 1995-2000 MHz limit OOBE to -13 dBm/MHz from 2000-2005 MHz and -40 dBm/MHz from 2005-2020 MHz.

In its December 5<sup>th</sup> meeting with Commission staff, Sprint reaffirmed that it remains supportive of DISH’s request that the Commission reallocate the S-Band from the Mobile Satellite Service, with only ancillary terrestrial service permitted, to a fully terrestrial mobile broadband service, provided that Sprint’s two major concerns are not adversely affected: 1) that there be no diminution or weakening of the PCS G Block interference protections established in the 3<sup>rd</sup> Generation Partnership Project (“3GPP”) TS 36.101 and the Commission’s rules; and 2) that the Commission makes the H Block fully useful for wireless broadband communications.

Sprint stated the Chairman’s proposal is a rational, balanced solution that would enable both AWS-4 and H Block spectrum to be used to expand broadband service to American consumers, thereby serving the public interest. DISH’s “new proposal,” on the other hand, would substantially reduce both the prospective value and wireless broadband utility of the H Block, thereby undercutting the viability of the H Block for supporting increased wireless broadband competition. Rather than offering an improved spectrum management solution that permits both AWS-4 and H Block to be deployed for broadband services, DISH’s “new proposal” is remarkably consistent with its previous positions in this proceeding, in which it first argued for relegating the H Block to a guard band for DISH’s prospective AWS-4 operations and then, upon gaining no support for that result, proposed limiting the H Block to “small cell use.”

Similarly, DISH’s offer to “voluntarily designate” the lowest 5 MHz of the AWS-4 uplink at 2000-2005 MHz as an “internal terrestrial guard band” is vague and ambiguous, and of dubious value when compared to the Commission’s draft proposal. DISH fails to explain what this “voluntary designation” would entail, how long it would last, how it would be enforced, and how and whether it would bind successor AWS-4 licensees. It raises many pertinent questions at this late stage in the Commission’s rulemaking, but offers essentially no answers. For example, does the DISH proposal’s emphasis on “terrestrial” imply that DISH contemplates a hybrid satellite-terrestrial service – the satellite portion of which would be permitted to use this portion of DISH’s uplink? Would DISH’s approach provide any additional protection to H Block devices as compared to the Commission’s draft proposal limiting AWS-4 user equipment power

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<sup>1</sup> See Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, FCC, WT Docket Nos. 12-70 and 04-356; ET Docket No. 10-142, at 4 (filed Dec. 3, 2012).

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in this portion of their band? Moreover, DISH conditions its offer of an “internal terrestrial guard band” on Commission adoption of unspecified and unstated safeguards “to ensure that the remaining 15 MHz of its uplink spectrum (2005-2020 MHz) can be utilized as fully and as quickly as possible for mobile broadband.” What are these safeguards? Would they require a further rulemaking with notice and comment? Would DISH continue to honor its voluntary “internal terrestrial guard band” commitment if the Commission, after receiving comments in response to its proposed H Block Notice of Proposed Rulemaking, adopted a proposal that DISH found to be a compromise among the various parties interests?

DISH makes a similarly questionable commitment to limit the OOB from AWS-4 user equipment to -30 dBm/MHz at 2000 MHz. DISH conditions this commitment (*a condition on its license rather than a restriction codified in Commission rules*) on future events – including not only the Commission’s auction of the H Block for “full-power LTE” but also the licensee’s specific *use* of full-power LTE. Should the winning licensee of the H Block decide to utilize an alternative technology (for instance LTE Advanced, EVDO, or HSPA+ -- any of which would be permitted under the Commission’s proposed flexible use licensing of the H Block), it appears DISH’s commitment would no longer hold.

Sprint believes the Commission’s draft proposal is well-balanced, and would provide better overall protection for the H Block by limiting AWS-4 user equipment to reduced power in the portion of the AWS-4 band next to the H Block, coupled with a reasonable OOB limit of -40 dBm/MHz, as compared to DISH’s proposal for an “internal terrestrial guard band” coupled with a less protective, conditional OOB limit of -30 dBm/MHz. Furthermore, DISH has raised no reasons as to why it could not meet a -40 dBm/MHz emissions limit.<sup>2</sup> The fact is that adopting the OOB limit in DISH’s “new proposal” would significantly increase the risk of an H Block device receiving interference from an AWS-4 device. As shown in the Attachment, the distances at which interference could occur from an AWS-4 user device would be more than tripled under DISH’s proposal and this change could result in widespread interference to future H Block users and a significantly decreased interest from potential H Block auction bidders.

DISH’s conditional support of a -30 dBm/MHz OOB limit is not only based on uncertain future events, such as completion of an H Block auction and a licensee decision on what technology and power would be used, it could enable AWS-4 equipment to be sold and used without having the necessary circuitry and filtering to even meet the -30 dBm/MHz OOB limit. Typically, manufacturers are required to design equipment and devices according to codified Commission rules and appropriate standards; such equipment cannot be marketed until it is shown to comply with those requirements. In this case, DISH’s “new proposal” would seem to sidestep that longstanding approach. Having seeded the market with equipment meeting only

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<sup>2</sup> Indeed, DISH has strongly advocated in the 3GPP standards process for a -40 dBm/MHz OOB limit from its Band 23/AWS-4 operations to the PCS G Block spectrum 5 MHz from the band edge, an identical situation to what it would be faced with under its “new proposal.”

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the existing OOB limit into the H Block, which has been pending revision by the Commission for many years, DISH will have effectively held the future H Block licensee hostage to an installed base of AWS-4 user equipment offering the H Block totally inadequate interference protection from AWS-4 user devices. As a consequence, the -30 dBm/MHz OOB commitment contained in DISH's "new proposal," like its offer to voluntarily create an "internal terrestrial guard band" of 2000-2005 MHz, is a mirage, serving only to diminish protection to the H Block and thereby devalue it in the eyes of prospective bidders.

DISH's "new proposal" also demands disparate treatment in terms of interference protection to AWS-4 *from* the H Block. While DISH apparently rejects the Commission's draft proposal of -40 dBm/MHz OOB protection from AWS-4 to the H Block, claiming (without offering accompanying studies or empirical data) that -30 dBm/MHz is sufficient, DISH's "new proposal" demands a much tighter -49 dBm/MHz protection from H Block transmissions into AWS-4 than contained in the Commission's draft proposal. The Commission's draft proposal of -40 dBm/MHz protection from H Block base station emissions to AWS-4 represents a reasonable balance that would appear to be feasible with today's LTE base station equipment. DISH's proposal, on the other hand, would be technically challenging and would likely increase the cost to deploy an H Block network by hundreds of millions of dollars, thereby decreasing the likely interest of parties to bid on the H Block. With respect to this proposal, DISH appears to be attempting to preempt the normal notice and comment process that will accompany the proposed H Block Notice of Proposed Rulemaking before it is even adopted and issued.

Lastly, in response to Commission staff questions regarding the 3GPP standards process, Sprint explained that if the Commission were to adopt DISH's proposal, 3GPP still would need to address the regulatory and license conditions. Generally, a 3GPP standard is adopted to meet all regulatory and licensing requirements and if, for example, DISH were to commit to an OOB requirement of -30dBm/MHz for its user equipment, then 3GPP would need to include this requirement within the 3GPP standard, most likely in the form of a "maintenance" change. Sprint reiterated its expectation that if the Commission adopts the Chairman's proposal, those requirements – which are based in part on typical 3GPP protection levels – could be easily incorporated into the current 3GPP standards within a three- to six-month period. DISH's proposal, if adopted by the Commission, would require at least a similar amount of time for 3GPP action and could take even longer since DISH's proposal provides less coexistence interference protection between broadband LTE devices than is normally adopted within 3GPP for similar situations.

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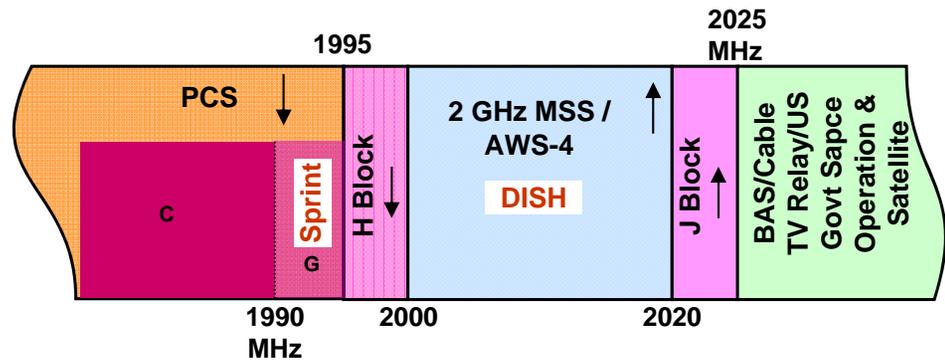
Pursuant to Section 1.1206 of the Commission's rules, this letter is being electronically filed with your office. Please let me know if you have any questions regarding this filing.

Sincerely,

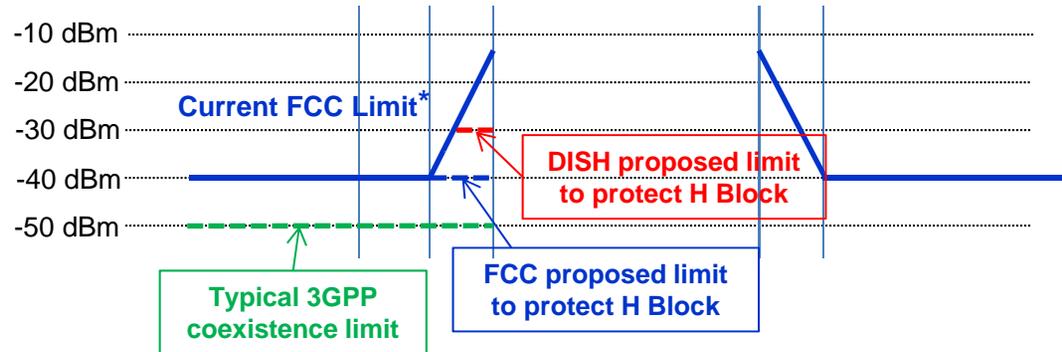
/s/ Marc S. Martin  
Marc S. Martin  
K&L Gates LLP  
1601 K Street NW  
Washington, DC 20006  
Counsel for Sprint Nextel Corporation

Attachment

cc: (via email)  
Renee Gregory  
Blaise Scinto  
Peter Daronco  
Jeremy Marcus  
Chris Helzer  
Paul Malmud  
Janet Young  
Mathew Pearl  
Kevin Holmes  
John Leibovitz  
Tom Peters  
Brian Regan  
Ruth Milkman  
Julius Knapp  
Michael Ha  
Angela E. Giancarlo  
David Goldman  
Louis Peraertz  
Courtney Reinhard

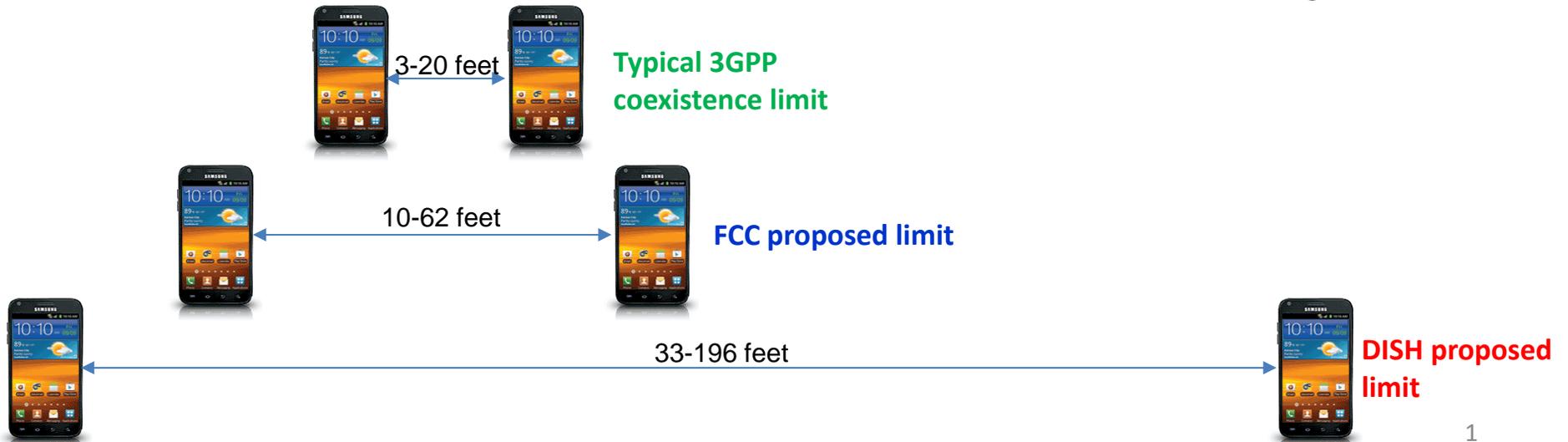


Out-of-band emission or noise limits from AWS-4 devices into adjacent bands. Lower numbers (e.g., -50 dBm) mean less noise is permitted.



\* MSS licensee has to fix any terrestrial interference it causes

Distances at which risk of interference from AWS-4 devices to H Block devices could begin to occur



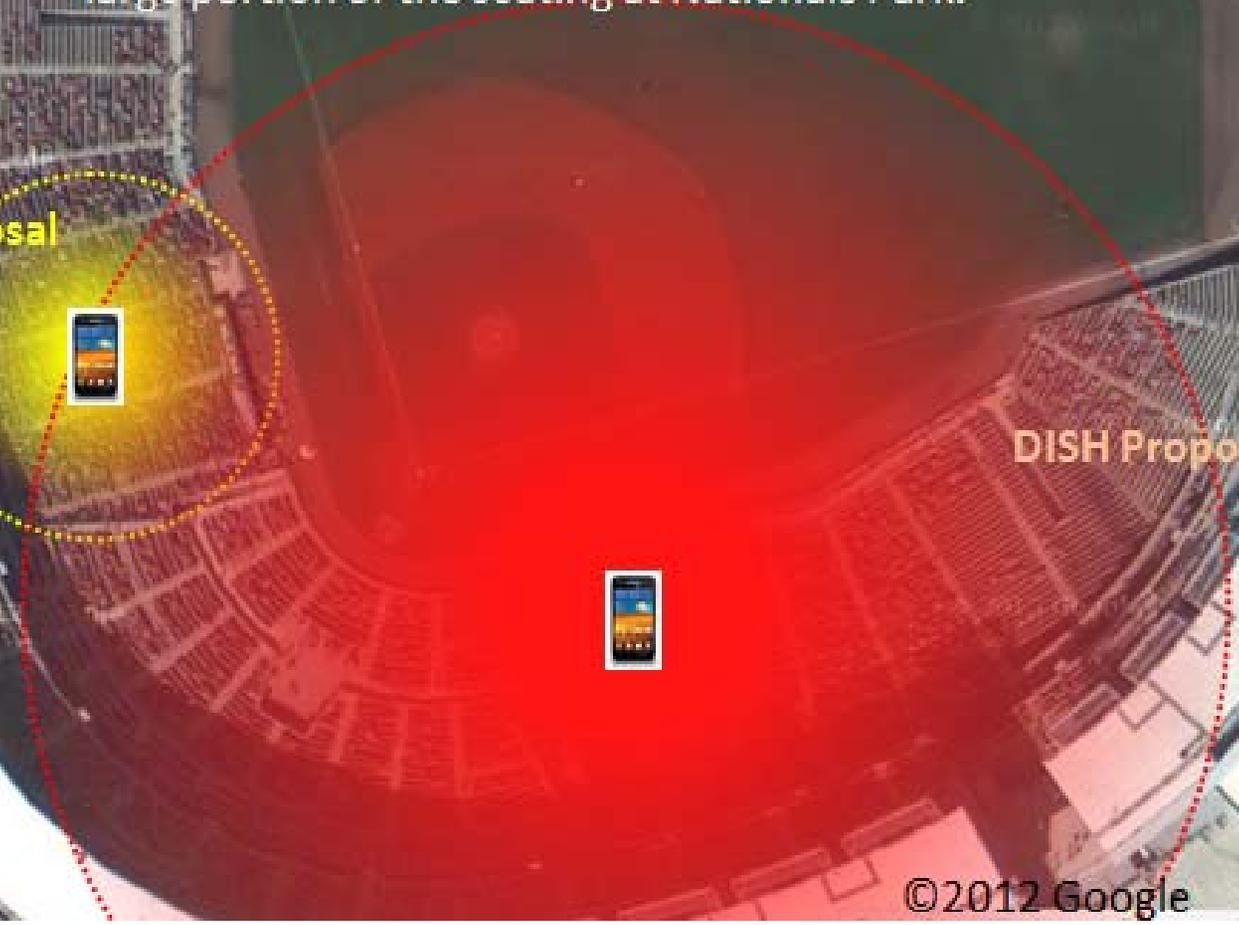
At Nationals Park, FCC proposed limits would limit interference risk area to within a few seats or rows of the user of a DISH device, as shown in yellow. DISH's proposed limits would increase interference risk area for a single DISH device to a large portion of the seating at Nationals Park.



FCC Proposal



DISH Proposal



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