

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Space Bureau Opens New Docket to)	SB Docket No. 25-173
Explore EchoStar Corporation's Use of)	
2 GHz MSS Spectrum)	
)	
Monitoring DISH's Compliance with)	WD Docket No. 22-212
Conditions Granting an Extension of Time)	
to Complete Construction of Facilities and)	
Buildout Commitments)	
)	

REPLY COMMENTS OF
THE FREE STATE FOUNDATION¹

These reply comments are submitted in response to the Commission's request for additional comment on a petition seeking reconsideration of the Wireless Bureau's grant of an extension of construction deadlines for licenses held by EchoStar Corporation (EchoStar).² Assuming the extension of EchoStar's construction permits was proper (an issue which we do not address here), weighing all the considerations as matters now stand, the Commission should deny the reconsideration request.

This is so given the billions in private capital that EchoStar has invested in building out a nationwide wireless network that makes available to 80% of American consumers a fourth facilities-based competitor; EchoStar's deployment of Open Radio Access Network (Open RAN) technology in furtherance of important American technology leadership and national security

¹ These reply comments express the views of Randolph J. May, President of the Free State Foundation, and Seth L. Cooper, Senior Fellow and Director of Policy Studies. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is a nonpartisan, non-profit free market-oriented think tank.

² Public Notice: Wireless Telecommunications Bureau Seeks Supplemental Comment on VTel's Petition for Reconsideration of the Extension of Construction Deadlines for Certain Licenses Held by EchoStar Corporation (May 12, 2025), at: <https://docs.fcc.gov/public/attachments/DA-25-404A1.pdf>.

objectives; and the inevitable litigation and delay in effective spectrum use that would result if the licenses were taken away and re-auctioned. Again, the Commission must consider the facts as they are today, and denial of the reconsideration petition would preserve certain existing consumer choice and competition benefits that otherwise might well be sacrificed.

From a free market-oriented perspective, protecting investment-backed expectations is always important with regard to realizing the deployment of highly capital-intensive communications networks. There is widespread agreement that constructing and operating wireless broadband networks depends on significant private market investment. Legal stability is a necessary ingredient for the operation of any marketplace conducive to competition and growth, including today's dynamic wireless market. Before risking their money in commercial ventures, private investors reasonably seek assurance that their interests and rights will be protected from changes in the rules or agency actions that are arbitrary or unforeseen. Indeed, as the Commission recognized in its 2017 *Restoring Internet Freedom Order*, "regulatory uncertainty serves as a major barrier to investment and innovation."³ Rescission of deadline extension orders granted months earlier undoubtedly creates a type of regulatory uncertainty.

In this proceeding, EchoStar reasonably relied on the Commission's actions and representations when, on September 17, 2024, the agency granted an extension of wireless network buildout milestones regarding certain spectrum bands on the condition that EchoStar fulfill certain public interest commitments, including by directing its resources to specific bands and areas.⁴ By doing so, the public benefitted from the accelerated deployment of EchoStar's 5G OpenRAN network to 80% of the U.S. population by the end of 2024. EchoStar reasonably

³ *Restoring Internet Freedom*, WC Docket No. 17-108, Declaratory Ruling, Report and Order, and Order (released January 4, 2018) at ¶ 249.

⁴ *See* Comments of EchoStar, Monitoring DISH's Compliance with Conditions Granting an Extension of Time to Complete Construction of Facilities and Buildout Commitments, WT Docket No. 22-212 (May 25, 2025), at 24-35.

directed its finite resources based on the expectation that the grant of extensions for its buildout milestones in certain spectrum bands was valid and would be honored. Denying the reconsideration petition would protect EchoStar’s investment-backed expectations. A rescission of the grant of network buildout deadline extensions also would create uncertainty for regulated parties in other agency proceedings who rightly would question the reliability of the Commission’s representations and decisions.

Moreover, denying the reconsideration petition would benefit the public interest by enabling EchoStar’s continued deployment of 5G Open RAN technology which, along with promoting innovation, increases supply chain diversity. The Commission has recognized that some of the largest 5G wireless network equipment manufacturers are Chinese entities that are under the influence of the Chinese Communist Party (CCP), posing counterintelligence and national security concerns.⁵ Indeed, the agency has implemented costly – but nevertheless warranted – initiatives to “rip-and-replace” Chinese 5G equipment from U.S. broadband networks.⁶

The Commission similarly has recognized the need for market-ready alternatives to compromised Chinese-manufactured 5G equipment, including the potential for software-based alternatives such as Open RAN. As Commissioner Nathan Simington stated in his address to the Open RAN Solutions Showcase hosted by the Commission in July 2021: “I believe that there are immense public interest benefits of ORAN-enabled networks, including the potential for increased network and supply chain security and innovative new market entrants.”⁷

⁵ See Promoting the Deployment of 5G Open Radio Access Networks, Notice of Inquiry, GN Docket 21-63 (released March 18, 2021).

⁶ See, e.g., Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs, WC Docket No. 18-89, Report and Order, Further Notice of Proposed Rulemaking, and Order (released November 26, 2019).

⁷ Commissioner Simington Addresses Open RAN Solutions Showcase (July 14, 2021), at: <https://docs.fcc.gov/public/attachments/DOC-374080A1.pdf>.

By facilitating the development of Open RAN technology, the U.S. also can facilitate other nations' deployment of 5G networks that are more secure, in furtherance of U.S. economic and national security interests. As then-Commissioner Carr recognized in 2021, with Open RAN, the components of the network "do not have to be built and integrated by one company." He continued: "As a policymaker, I think this is attractive for three main reasons: service, jobs, and security:"⁸ Those objectives cited by now-Chairman Carr are strongly implicated by EchoStar's deployment of 5G Open RAN and they weigh against granting the reconsideration petition.

Additionally, denying the reconsideration petition would benefit American consumers. Of course, from a free market perspective, the additional competitive choice offered by EchoStar serving as a fourth facilities-based terrestrial wireless network provider should promote lower prices, higher service quality, and innovation. Indeed, the Commission's 2019 *T-Mobile/Sprint Order* recognized the "significant public interest benefits" promised by EchoStar's construction of a nationwide 5G wireless broadband network.⁹ Constructing a competing nationwide 5G wireless network is a challenging, expensive, and risky undertaking that few likely would undertake. EchoStar has taken up this daunting challenge and deployed over 24,000 5G sites that cover over 80% of Americans. But rescinding the grant of network buildout deadline extensions and pulling its spectrum licenses likely would cause as much as 80% of consumers to lose the choice of a fourth facilities-based terrestrial wireless competitor. Accordingly, the public interest

⁸ *Promoting the Deployment of 5G Open Radio Access Networks*, Statement of Commissioner Brendan Carr, <https://docs.fcc.gov/public/attachments/FCC-21-31A3.pdf>.

⁹ Applications of T-Mobile US, Inc., and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification (released November 5, 2019), at ¶ 377. *See also, e.g., id.* at ¶ 292, ¶ 374.

in promoting competition from a fourth facilities-based provider favors denying the reconsideration petition.

Furthermore, public harm would result from the inevitable litigation and unavoidable administrative delay that would be caused by rescinding the grant of extension on build-out requirements, taking away EchoStar's spectrum licenses, and reauctioning those licenses to other parties. Costly litigation over spectrum licenses can take years, during which time the spectrum is not utilized – or underutilized, as the incentive to invest is likely to be reduced significantly by legal uncertainty. Also, conducting spectrum license auctions is a time-consuming process, including complex administrative tasks such as ensuring the spectrum has been cleared, setting auction dates and rules, reviewing applications and bids, and issuing the licenses to bid winners. These likely public harms weigh against the Commission granting the reconsideration petition.

In sum, assuming the extension grant was proper, given the 5G network build-out milestones that EchoStar already has achieved and the considerable likely benefits to America's consumers and to the national interest, the reconsideration petition should be denied.

Respectfully submitted,

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