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**There's Widespread Support for Preserving Investment-Backed Expectations in
the EchoStar Proceeding**

by

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I. Introduction

The Commission is currently considering EchoStar's application to assign certain spectrum licenses to AT&T and SpaceX. In a [Free State Foundation Perspectives](#) published on February 17, after explaining the background of the proposed transaction, I concluded that the Commission should not allow its processes to be abused by EchoStar to defeat legitimate investment-backed expectations. I stated that "using the Commission's transaction review process as a means of escaping contractual obligations that are integral to much needed communications infrastructure build-outs cannot be consistent with the public interest." Indeed, I said that if the Commission did so, "as a result of the precedent established, it likely will become more difficult in the future to raise the capital necessary to fund the multi-billion-dollar broadband infrastructure build-outs that are the foundation of the 'Build America Agenda.'"

The requisite background and facts relevant to the Commission's consideration of the pending transaction may be found in my [February 17 Perspectives](#). Here I want to provide a brief update that provides further support for the views articulated in my earlier paper that the Commission should not allow its processes to be abused by frivolous claims of force majeure and corporate hide-

the-assets shenanigans. In considering EchoStar's application, the Commission should exercise its authority in a way – through requiring an escrow or some other means – that ensures that funds ultimately will be available to satisfy EchoStar's contractual obligations to the tower companies and other infrastructure suppliers.

II. The Brattle Group Study

On March 11, 2026, the [Brattle Group](#) issued a report commissioned by the Wireless Infrastructure Association examining the impacts that would result from DISH's contract defaults. Likely adverse effects would include rent increases, higher financing costs, and reduced investment. They also would include higher prices, lower service quality, and slower innovation as a result of the uncertainty created by the lack of confidence regarding the enforceability of contracts.

The report estimates the effect on rents and cost of capital. It estimates that DISH's leases amounted to between 5.1 and 7.0 percent of annual rental revenues across the industry. To make up the reduced revenue, tower companies would need to increase rents on remaining tenants by 5.7 to 10.7 percent, depending on whether rents could be raised now or would have to wait until existing price guarantees expire. The report also estimates that a one percentage point rise in the weighted average cost of capital would require rents to rise by 0.3 percentage points in order to keep revenue even.

For tower companies that had DISH as a tenant on a large number of towers, the costs of the default would be almost double their entire annual capital expenditures. American Tower stated it would lose \$210 million annually due to the DISH default. Crown Castle is seeking over \$3.5 billion in its lawsuit against DISH.

According to the Brattle report, rural areas and smaller manufacturers are likely to suffer most. Rural areas often have limited infrastructure redundancy. The loss or degradation of even a single tower can reduce coverage, weaken network reliability, and undermine service availability for consumers who already face less connectivity. Builders may be less willing to work with smaller providers, considering them a larger risk. Smaller companies accounted for 5 – 10 % of DISH's sites.

Brattle concludes that DISH's actions involve more than a private contractual dispute. They represent "a material negative shock to a capital-intensive sector that sits at the core of U.S. wireless competition and innovation. If not remedied, the resulting rent increases, higher financing costs, reduced investment, and potential coverage gaps would ultimately harm consumers through higher prices, diminished service quality, and slower technological progress."

III. Other Commenters Express the Similar Concerns

Since I published my [FSF Perspectives](#), others have advised the Commission that they have similar concerns. Like me, they all emphasize that they are not seeking to prevent the transfer of spectrum to AT&T and SpaceX. Rather they ask that, in the context of considering the proposed spectrum assignment, EchoStar should be required, in one way or another, to preserve enough assets to ensure that it can pay any judgements against it.

Here are three recent examples.

The [Center for American Rights](#) includes an impressive list of past precedents the FCC could use to act in a way that prevents its processes from being abused. As CAR explains, “the Commission does not need to take sides in [litigation against DISH] It can simply recognize the fact of serious ongoing litigation tied directly to this proceeding and require a financial guarantee arrangement to manage risk from different possible outcomes of those lawsuits.” To the same effect, “as a protective measure to ensure that assets are available if that litigation succeeds and to discourage DISH or future transaction applicants from creative asset arrangements, the Commission should consider a financial safeguard as an option to protect the integrity of its processes.”

The [American Wireless Builders Coalition](#) represents 40 diverse companies whose operations have been placed at risk by DISH’s abrupt suspension of payments. In a letter to Chairman Carr, the Coalition states that “[t]his widespread nonperformance is already causing financial strain, work stoppages, decommissioning concerns, and uncertainty across the wireless and communications services ecosystem.” It also stated that the proposed transactions “are closely linked to DISH’s effort to use corporate restructuring and alleged ‘FCC actions’ as a pretext to avoid paying its lawful obligations.” Finally, the Coalition warns that, if the value of long-term contracts is reduced, “eroding confidence in the use of long-term agreements will increase capital costs, slow deployment, reduce the likelihood of new facilities-based competitors, and ultimately harm consumers.”

The [Bull Moose Project](#) also supports a requirement that the claims by infrastructure companies and suppliers for monies allegedly owed by EchoStar be protected as part of the transaction review process. In a submission to the Commission, it states that approval of the transactions “should not allow a company to evade financial obligations to the American workers and businesses that built the network infrastructure associated with those licenses.” Thus, it asks the FCC to condition approval of the spectrum transfers “on EchoStar establishing an escrow from transaction proceeds sufficient to cover outstanding obligations to their infrastructure partners.”

IV. Conclusion

As I said in my [February 17 Perspectives](#), “as long as the Commission's public interest authority continues to exist – if it means anything at all – it surely must mean that parties will not be allowed to use the Commission's processes to engage in shell games in a way that contravenes public policy and the public interest.” The Brattle Group report highlighting both the short and long-term implications at stake for infrastructure investment and innovation, along with the further submissions to the Commission, lend additional support to this conclusion.

Chairman Carr's "Build America Agenda" is a bold initiative – one that plays a key role in advancing consumer welfare and securing America's economic prosperity. The Commission's actions with respect to its consideration of the EchoStar spectrum assignment applications should be consistent with preserving the prospects for the success of that important project.

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