

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Monitoring DISH’s Compliance with)	WT Docket No. 22-212
Conditions Granting an Extension of Time)	
to Complete Construction of Facilities and)	
Buildout Commitments)	
EchoStar Construction Milestone)	Lead Call Signs WQXK340, WQTX200,
Extension Request)	T070272001, T060430001, WQJY944,
)	WQWQ558, WQZM232 and WQWQ819

**COMMENTS OF
OPEN TECHNOLOGY INSTITUTE AT NEW AMERICA
AND PUBLIC KNOWLEDGE**

The Open Technology Institute at New America and Public Knowledge (“OTI and PK”) submit these comments in response to the above-captioned Public Notice seeking further comment on a petition for reconsideration filed by VTel Wireless, Inc. (“VTel”) of the Commission’s grant of conditional extensions of construction deadlines for certain EchoStar licenses.¹ Last November our groups submitted for the record our view that it was entirely “appropriate for the Wireless Telecommunications Bureau (“WTB”) to grant EchoStar’s construction extension requests since it is clearly justified and EchoStar’s additional commitments advance important public interest goals with respect to mobile market competition

¹ 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, WT Docket No. 22-212, DA 25-404 (May 12, 2025) (“WTB Public Notice”); Petition for Reconsideration of VTel Wireless, Inc., WT Docket No. 22-212 (filed Oct. 21, 2024).

and digital equity.”² Today, after eight months and demonstrable progress by EchoStar to deploy nationwide an innovative Open RAN 5G network, we continue to believe the combination of buildout extensions and conditions negotiated and granted by the Bureau benefits consumers, competition, and the overall public interest. We urge the Commission to give EchoStar every opportunity to become a fourth nationwide, facilities-based mobile provider.

I. The Buildout Extensions and Conditions Granted by the Wireless Bureau were Justified and Clearly Serve the Public Interest in Multiple Respects

As we previously stated in response to the VTel petition for reconsideration, our groups urge the Commission to dismiss VTel’s petition and reaffirm support for the ambitious and uphill effort of EchoStar to build a fourth facilities-based nationwide mobile network that leverages innovative and strategically important Open RAN (O-RAN) technology.³ Under the Commission’s rules and past practice, WTB clearly had the authority to negotiate and grant the extension of construction deadlines based on extensive and detailed filings that met the extension requirements.⁴ The Bureau “acts for the Commission under delegated authority, in all matters pertaining to the licensing and regulation of wireless telecommunications[.]”⁵ WTB, as it should, recognized that in a relatively short time after the final approval of the T-Mobile/Sprint merger

² Letter from Michael Calabrese, Open Technology Institute, and Harold Feld, Public Knowledge, to Marlene H. Dortch, Federal Communications Commission, WT Docket No. 22-212 (Nov. 7, 2024) (“OTI & PK Letter”).

³ *Id.*; *see also* Letter from Michael Calabrese, Open Technology Institute, to Marlene H. Dortch, FCC, ET Docket No. 18-295, WT Docket Nos. 20-443, 24-186, 22-212 (Jan. 21, 2025).

⁴ *See* Letter from Jeffrey H. Blum, Executive Vice President, External and Legislative Affairs, EchoStar Corporation, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 22-212 (filed Sept. 18, 2024).

⁵ 47 C.F.R. § 0.131(a).

in 2020, EchoStar faced numerous obstacles to meet its buildout requirements, some of which (e.g., pandemic-induced supply chain shortages and inflation) could not possibly have been anticipated.⁶ For these reasons, WTB correctly and justifiably extended EchoStar’s buildout deadline in consideration of what was best overall for the public interest.

Chairman Carr’s recent letter to EchoStar expresses his understandable frustration at the apparent lack of transparency and consultation inside the Commission prior to the Bureau’s decision to grant the extensions and accompanying public interest conditions.⁷ But however faulty the FCC’s internal process might have been, we believe it is inappropriate to blame the licensee or to rescind a decision — more than eight months later — that is otherwise in the public interest and that has induced continued reliance and billions of dollars of investment on the part of EchoStar.

As consumer advocates, we urge the Commission to give EchoStar every opportunity to deploy and become a meaningful mobile market competitor. Promoting and enabling a fourth nationwide provider is critical to enhancing competition in a concentrated mobile market. EchoStar’s commitments to accelerate and expand its buildout nationwide, rather than get sidetracked with less impactful deployments intended only to meet the short-term deadline, will ultimately benefit consumers by preserving and enhancing competition in the mobile broadband marketplace.

⁶ Letter from Joel Taubenblatt, FCC, to Jeffrey Blum, DISH, WT Docket No. 22-212 (Sept. 29, 2023).

⁷ See Letter from Brendan Carr, Chairman, FCC, to Charles W. Ergen, Chairman, EchoStar Corporation, “Re: EchoStar’s Spectrum Licenses” (May 9, 2025) (“EchoStar negotiated behind closed doors during the previous Administration in September 2024”). On the other hand, in fairness to EchoStar, it is routine for the Bureau to grant build out extensions, and the unique factors at issue here justified the Bureau moving quickly to provide both EchoStar and the capital markets needed to finance EchoStar’s network build out necessary certainty to continue investment.

In the past, the Commission has routinely granted buildout extensions for a wide range of reasons, approving 75 percent according to one GAO study.⁸ EchoStar’s progress here is demonstrably different than the norm. Starting virtually from scratch just prior to the T-Mobile/Sprint merger, EchoStar has deployed more than 24,000 base stations with 144,000 radios since 2019.⁹ In September 2023, WTB certified that DISH had met its 5G buildout requirements under the T-Mobile/Sprint merger Order.¹⁰ And as of December 2024, EchoStar’s greenfield Open RAN 5G network covered 268 million Americans, or over 80% of the country’s population.¹¹ By April this extensive network deployment already included over 23,000 towers.¹²

Boost Mobile has 7 million subscribers overall, a number that initially declined but has grown over the past two quarters. Boost added 150,000 subscribers in the most recent quarter, a 12 percent increase.¹³ Perhaps most importantly, 1.25 million Boost customers are facilities-

⁸ GAO, “Spectrum Management: FCC’s Use and Enforcement of Buildout Requirements,” GAO 14-236 (Sept. 2014) (finding FCC approved 75 percent of construction deadline extension requests), <https://www.gao.gov/assets/gao-14-236.pdf>.

⁹ EchoStar Corporation 5G Buildout Status Report, attached to Letter from Jeffrey Blum, EchoStar, to Joel Taubenblatt, FCC, WT Docket No. 22-212 at 2 (May 5, 2025) (achieving its commitment nearly two months ahead of schedule).

¹⁰ Letter from Joel Taubenblatt, FCC, to Jeffrey Blum, DISH, WT Docket No. 22-212, at 1 (Sept. 29, 2023) (certifying that “DISH has met its band-specific 5G commitments and two of its three nationwide 5G commitments[.]”); *see also* DISH 5G Buildout Status Report, attached to Letter from Jeffrey Blum, EchoStar, to Joel Taubenblatt, FCC, WT Docket No. 22-212, at 1 (July 14, 2023).

¹¹ *See* EchoStar Corporation 5G Buildout Status Report, attached to Letter from Jeffrey Blum, EchoStar, to Joel Taubenblatt, FCC, WT Docket No. 22-212, at 2 (May 5, 2025).

¹² Letter from Jeffrey Blum, EchoStar, to Marlene H. Dortch, FCC, WT Docket No. 22-212, at 1 (Apr. 23, 2025).

¹³ Monica Allevan, “Boost’s Prospects Look Better in Q1 But Struggle Remains,” *Fierce Wireless* (May 9, 2025), <https://www.fierce-network.com/wireless/boosts-prospects-look-better-q1-struggle-remains>; EchoStar, “EchoStar Announces Financial Results for the Three and Twelve Months Ended December 31, 2024,” Press Release (Feb. 27, 2025), <https://ir.echostar.com/news-releases/news-release-details/echostar-announces-financial-results-three-and-twelve-months-5>.

based 5G subscribers relying on Boost’s own Open RAN technology.¹⁴ And although Boost Mobile has fewer overall subscribers than it did when Sprint had only pre-paid customers and high churn (Boost is now one-third post-paid),¹⁵ neither the Communications Act nor the Code of Federal Regulations measures buildout requirements in terms of the number of active subscribers, which can take far more time than building out the network itself.

Moreover, VTel ignores EchoStar’s extensive, additional public interest commitments, which are summarized in its filing.¹⁶ We believe the public interest conditions imposed by WTB’s extension grant are both positive and unprecedented. WTB negotiated a win-win agreement, since the extension created incentives for EchoStar to accelerate buildout to cover 80 percent of the population with its Open RAN network by the end of 2024 (up from 70 or 75 percent, depending on the license) and to offer a low-cost 5G plan and device to consumers nationwide during the extension period. The agreement also ensures that small carriers and tribes will be able to lease EchoStar’s spectrum in the license extension areas. We commend the Bureau for negotiating such beneficial conditions, which notably include an agreement to offer a low-cost 5G plan and device to consumers nationwide.

Finally, as a matter of precedent and principle, the Commission must consider EchoStar’s reliance on the now eight-month-old extension agreement and, more broadly, on the government’s stated policy during the first Trump administration to facilitate EchoStar (then

¹⁴ *Id.* See also Wind River, “Boost Mobile and Wind River Collaborate on Largest CaaS Vendor Changeover on an Open RAN Network,” Press Release (Dec. 3, 2024) (“[w]ith the world’s largest Open RAN deployment, Boost Mobile is helping to lead innovation in the market”).

¹⁵ Monica Allevan, “Boost’s Prospects Look Better in Q1 But Struggle Remains,” *Fierce Wireless* (May 9, 2025) (“[a]bout one-third of Boost’s net additions in Q1 were postpaid”), <https://www.fierce-network.com/wireless/boosts-prospects-look-better-q1-struggle-remains>.

¹⁶ Opposition of EchoStar Corporation to Petition for Reconsideration of VTel Wireless, Inc., WT Docket No. 22-212, at 13 (Oct. 31, 2024).

DISH) as a fourth facilities-based competitor as part of the remedy underlying approval of the T-Mobile/Sprint merger, a remedy specifically upheld by two federal courts.¹⁷ This is not a matter of amending rules, where licensees understand that a pending Petition for Reconsideration means that rules remain subject to adjustment or even reversal. This was a necessary precondition for the investment of billions of dollars to meet an aggressive buildout schedule for a network relied upon by both the Department of Justice and the Commission to provide a nation-wide network.¹⁸ It's also notable that WTB's action last September was not a simple extension, but a negotiated agreement that granted certain extensions in exchange for accelerations that EchoStar has already fulfilled, along with the other substantial public interest obligations noted just above.

II. Reversing the Bureau's Decision Would Undermine Competition, Harming Consumers, Particularly in Rural and Lower-Income Communities

Our groups supported the combination of buildout extensions and conditions approved by the Wireless Bureau principally because it will benefit consumers by preserving and enhancing competition in a steadily consolidating mobile broadband marketplace. We strongly believe consumers will benefit most if the Commission gives EchoStar every opportunity to deploy and become a fourth mobile market competitor. Traditional antitrust analysis and the Commission's own experience have demonstrated that subscribers need a minimum of four national providers to see vigorous competition between providers. The Commission and the Department of Justice have both concluded that consumers will only experience the full benefits of competition with a

¹⁷ *T-Mobile/Sprint Order*, 34 FCC Rcd. at 10583 ¶ 12; *United States v. Deutsche Telekom AG*, No. CV 19-2232, at *6-7 (D.D.C. Apr. 14, 2020); *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 232-33 (S.D.N.Y. 2020).

¹⁸ Even in the rulemaking context, the Commission is required to consider the reliance interest of those impacted by the changes. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Certainly here, with billions of dollars at stake, the Commission must consider the reasonable reliance of EchoStar as the only way to actually meet its deadlines.

minimum of *four* national competitors. As CCIA observed in its recent comments opposing the VTel petition,¹⁹ the Commission’s 2022 *Marketplace Report* stated that as of year-end 2021, the Herfindahl-Hirschman Index (HHI) score for this market was 3596.²⁰ This is nearly double the threshold for a highly concentrated market as outlined in the DOJ’s 2023 Merger Guidelines.²¹

Accordingly, any reversal or long-running uncertainty about the validity of the buildout extension and pro-consumer conditions approved by WTB could easily result in locking in the three-carrier oligopoly that President Trump’s DOJ and FCC sought to remedy when it finalized the T-Mobile/Sprint merger agreement. One negative impact is likely to be higher prices for consumers. Boost Mobile offers unlimited data plans starting at \$25 per month (for 30 GB of premium data), with a guarantee of no future price increases.²² Consumers can include a new iPhone with this plan for an additional \$40 per month, which includes an option to “swap your current phone for the latest model” each year, for a total guaranteed total price of \$65 per month.²³

Further, although EchoStar’s facilities-based network now covers more than 80 percent of U.S. consumers, it would be middle- and low-income consumers in rural and small-town markets that would be disproportionately harmed by higher prices and less competition. Since

¹⁹ Comments of Computer & Communications Industry Assn, WT Docket No. 22-212, SB Docket 25-173, at 2 (May 22, 2025).

²⁰ Communications Marketplace Report, FCC, GN Docket No. 22-203, 37 FCC Rcd. 15514, 15574 ¶ 78 (rel. Dec. 30, 2022), <https://www.fcc.gov/document/2022-communications-marketplace-report>.

²¹ U.S. Dep’t of Justice and Fed. Trade Commission, Guideline 1, Merger Guidelines at 5 (Dec. 18, 2023) (HHI greater than 1800 is indicative of a “highly concentrated market”), <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

²² Boost Mobile, Unlimited Plans, <https://help.boostmobile.com/docs/unlimited-plans>.

²³ Boost Mobile, Infinite Access Plans, <https://help.boostmobile.com/docs/infinite-access-plans>.

the licenses potentially subject to cancellation are almost entirely outside large metropolitan areas, stopping EchoStar from completing its nationwide buildout would negatively impact rural and small-town consumers in particular. Boost Mobile is a low-cost provider. Canceling its licenses in less densely populated and less profitable markets would deny those communities a fourth competitor for many years due to litigation and, assuming the Commission prevails, to a re-auction. And because Boost targets pre-paid and lower-income consumers, it could deprive those communities of a more affordable option indefinitely.

III. Reversing the Bureau’s Decision Would Undermine Open RAN Innovation, Harming U.S. National Security and Economic Interests

As noted above, EchoStar’s greenfield Open RAN 5G network already connects 1.25 million subscribers and covers over 80 percent of the U.S. population (368 million Americans). EchoStar is the only U.S. mobile service provider focused on O-RAN. American leadership in the technology’s development, standardization, and commercialization is significantly dependent on the company’s continued buildout. EchoStar’s O-RAN network is not only less costly and more secure than incumbent mobile networks, it is fueling an ecosystem of U.S. vendors to supply its components. These companies include Mavenir, JMA Wireless and AltioStar.²⁴ Echostar’s O-RAN network is also proving out the technology quickly: OpenSignal recently reported in its rankings that EchoStar has the best coverage and most reliable 5G network in 15 of the nation’s major cities, including New York City.²⁵

²⁴ See Tim McDonald, “Is the FCC Trying to Kill Open RAN? Chairman Carr’s Letter to EchoStar Sends a Dangerous Signal,” Substack (May 25, 2025), <https://trmcdonald.substack.com/p/is-the-fcc-trying-to-kill-open-ran>. McDonald argues that Chairman Carr’s letter could have a “chilling effect on Open RAN investment” since EchoStar and equipment vendors developing the ORAN ecosystem “need the confidence that if they take regulatory and architectural risks, they won’t be left hanging when politics shift.” *Id.*

²⁵ See Monica Allevan, “Boost boasts better 5G in 15 major US cities,” *Fierce Wireless* (May 13, 2025), <https://www.fierce-network.com/wireless/boost-boasts-better-5g-15-major-us-cities>. The

The White House and President Trump himself have emphasized the importance of O-RAN for trade and for national security, particularly with respect to our competition with China. For example, a White House joint statement in February by President Trump and Japanese Prime Minister Ishiba Shigeru asserted that various alliances in Asia were critical to security and prosperity, and that “[t]hrough these relationships, the United States, Japan, and like-minded partners can deliver high quality infrastructure investments in the region, including the deployment of Open Radio Access Networks in third countries.”²⁶

Last month, White House Office of Science and Technology Policy director Michael Kratsios stated in a public speech that “[f]or a future stamped with the American character, the federal government must become an early adopter and avid promoter of American technology. . . . Our infrastructure, supply chains, and those of our allies must be secured, too. We cannot afford to remain dependent . . . on Chinese-controlled critical infrastructure, whether in telecom, the grid, or AI”²⁷ To that end, Congress in the National Defense Authorization Act for Fiscal Year 2024 (NDIA) provided that “the Secretary of Defense shall develop and implement a strategy for deploying to military installations and other facilities of the Department of Defense private wireless networks that are. . . based on fifth generation information and communications

cities are: Atlanta, Charlotte, Cleveland, Columbus, Dallas, Fort Worth, Detroit, Houston, Miami, New York City, Orlando, Philadelphia, Raleigh, St. Louis and Denver.

²⁶ The White House, “United States-Japan Joint Leaders Statement” (Feb 7, 2025), available at <https://www.whitehouse.gov/briefings-statements/2025/02/united-states-japan-joint-leaders-statement/>.

²⁷ The White House, “Remarks of Director Kratsios at the Endless Frontiers Retreat” (April 14, 2025), <https://www.whitehouse.gov/articles/2025/04/remarks-by-director-kratsios-at-the-endless-frontiers-retreat/>. See also Melissa K. Griffith, “Open RAN and 5G: Looking Beyond the National Security Hype,” Wilson Center (Nov. 2, 2020), <https://www.wilsoncenter.org/article/open-ran-and-5g-looking-beyond-national-security-hype> (“Open RAN offers a solution for the untrusted vendor problem the U.S. faces with Chinese companies.”).

capabilities and Open Radio Access Network architecture.”²⁸ The loss or crippling of America’s only large-scale 5G mobile network built entirely on Open RAN technology would be contrary to all of these larger policy goals embraced by both the White House and Congress.

IV. Conclusion

OTI and PK urge the Commission to rapidly dismiss VTel’s Petition for Reconsideration. EchoStar made a compelling case for its extension request and the Bureau had ample authority to grant it, particularly since WTB also imposed conditions that we believe serve the public interest. EchoStar has invested tens of billions of dollars and is already in effective compliance. Mobile market competition, consumer welfare, and national security will be best served if the Commission does not hinder but instead facilitates the completion of EchoStar’s greenfield ORAN network. Building a nationwide mobile network from scratch is a high hill to climb, and EchoStar deserves every benefit of the doubt as it tries to surmount numerous obstacles, some of which were unanticipated years ago.

Respectfully submitted,

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²⁸ National Defense Authorization Act for Fiscal Year 2024, Public Law 118-31 (enacted Dec. 22, 2023), <https://www.congress.gov/bill/118th-congress/house-bill/2670/text>.