

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
DISH Network Corporation)	WT Docket No. 13-225
)	
Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) of the Commission's Rules and Request for Extension of Time)	

MEMORANDUM OPINION AND ORDER

Adopted: August 14, 2018

Released: August 16, 2018

By the Commission:

1. In this Order, we dismiss for lack of standing NTCH, Inc.'s Application for Review¹ of the Wireless Telecommunications Bureau *Memorandum Opinion and Order* granting DISH Network Corporation a waiver of certain rules to allow DISH the flexibility to use 20 megahertz of Advanced Wireless Services-4 (AWS-4) spectrum at 2000-2020 MHz for either uplink or downlink operations and extending DISH's final AWS-4 build-out deadline from seven to eight years.²

I. BACKGROUND

2. DISH Network Corporation (DISH) is the sole holder of the 2 GHz Mobile Satellite Service (MSS) and corresponding AWS-4 terrestrial licenses.³ DISH acquired the 2 GHz MSS licenses in March 2012.⁴ In December 2012, the Commission authorized full terrestrial use of the 2000-2020 MHz and 2180-2200 MHz bands,⁵ thereby expanding the possibilities for terrestrial use previously authorized under the Ancillary Terrestrial Component (ATC) of 2 GHz MSS licenses.⁶ Specifically, the Commission determined that the public interest would be served by granting AWS-4 terrestrial operating authority to

¹ NTCH, Inc.'s Application for Review, WT Docket No. 13-225 (filed Jan. 22, 2014) (Application for Review).

² See *DISH Network Corporation; Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) of the Commission's Rules and Request for Extension of Time*, Memorandum Opinion and Order, 28 FCC Rcd 16787 (WTB 2013) (*DISH Waiver Order*).

³ MSS is a radiocommunication service involving transmission between mobile earth stations and one or more space stations. See 47 CFR § 2.1(c). AWS-4 service refers to terrestrial wireless service in the 2000-2020 MHz and 2180-2200 MHz frequency bands. *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands et al.*, WT Docket No. 12-70 et al., Report and Order and Order of Proposed Modification, 27 FCC Rcd 16102, 16103, para. 1 (2012) (*AWS-4 Report and Order*).

⁴ *DBSD North America, Inc., Debtor-in-Possession et al.*, Order, 27 FCC Rcd 2250, 2262, paras. 1, 31 (IB 2012) (*DISH Transfer Order*). The AWS-4 and associated MSS licenses are actually held by DISH subsidiaries Gamma Acquisitions L.L.C. (MSS call sign E060430, AWS-4 call signs T060430001 through T060430176) and DBSD Services Limited (MSS call sign E070272, AWS-4 call signs T070272001 through T070272176). For convenience, we refer to these licensees collectively as DISH.

⁵ *AWS-4 Report and Order*, 27 FCC Rcd at 16103, para. 1.

⁶ See *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 Bands et al.*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 1964, para. 1 (2003).

the existing MSS licensees in the band⁷ and replaced the ATC rules with Part 27 flexible use rules for terrestrial operations.⁸ The AWS-4 rules designated the Lower AWS-4 band (2000-2020 MHz) for mobile and low power fixed (i.e., uplink) operations and the 2180-2200 MHz band (Upper AWS-4 band) for fixed and base station (i.e., downlink) operations.⁹ Pursuant to this decision and Section 316 of the Communications Act of 1934, as amended (Act), the Commission proposed to modify DISH's MSS licenses to include the AWS-4 terrestrial authorizations.¹⁰ On January 22, 2013, DISH accepted the proposed license modifications,¹¹ and on February 15, 2013, the Wireless Telecommunications Bureau (WTB or Bureau) and the International Bureau granted these license modifications.¹² WTB issued the modified licenses to DISH on March 7, 2013.¹³

3. On September 9, 2013, DISH filed a waiver petition requesting the option to use the Lower AWS-4 band for either downlink or uplink operations (DISH Petition).¹⁴ DISH also requested a one-year extension or waiver of the final build-out milestone for DISH's use of the AWS-4 band.¹⁵ DISH stated that, should the Commission grant these requests, DISH would commit to: (1) file an election with the Commission "as soon as commercially practicable, but no later than 30 months after the grant of [its] petition," specifying "whether it will deploy the [Lower AWS-4] 2000-2020 MHz band for downlink or uplink use;"¹⁶ and (2) "bid[] at least a net clearing price equal to any aggregate nationwide reserve price established by the Commission in the upcoming H Block auction (not to exceed the equivalent of \$0.50 per MHz/POP)."¹⁷ At 1995-2000 MHz, the Upper H Block (prescribed for downlink under the

⁷ *AWS-4 Report and Order*, 27 FCC Rcd at 16164-73, 16220-21, 16224, paras. 161-86, 319-20, 331-32.

⁸ See generally *AWS-4 Report and Order*, 27 FCC Rcd 16226-47 (Appx. A).

⁹ 47 CFR § 27.5(j)(1) ("Two paired channel blocks of 10 megahertz each are available for assignment as follows: Block A: 2000-2010 MHz and 2180-2190 MHz; and Block B: 2010-2020 MHz and 2190-2200 MHz."); *AWS-4 Report and Order*, 27 FCC Rcd at 16116, para. 33 ("We . . . establish the AWS-4 spectrum band as 2000-2020 MHz uplink band paired with 2180-2200 MHz downlink band."). The Commission intended this pairing to parallel that of the 2 GHz MSS band, so as to "minimize the possibility that AWS-4 operations could interfere with 2 GHz MSS operations and . . . [to] offer the greatest opportunity for synergies between the two mobile services." *AWS-4 Report and Order*, 27 FCC Rcd at 16117, para. 39.

¹⁰ *AWS-4 Report and Order*, 27 FCC Rcd at 16164-73, 16220-21, 16224, paras. 161-86, 319-20, 331-32.

¹¹ Letter from Jeffrey H. Blum, Senior Vice President & Deputy General Counsel, DISH, to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 12-70 et al. at 1 (filed Jan. 22, 2013).

¹² See *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands et al.*, Order of Modification, 28 FCC Rcd 1276, 1278, paras. 6-10 (IB/WTB 2013) (*AWS-4 Order of Modification*).

¹³ NTCH filed a petition for reconsideration of the AWS-4 Report and Order in WT Docket Nos. 12-70, 04-356 and ET Docket No. 10-142. See NTCH, Inc., Petition for Reconsideration, WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142 (filed Mar. 7, 2013). Shortly thereafter, NTCH also filed a petition for reconsideration of the AWS-4 Order of Modification. See NTCH, Inc., Petition for Reconsideration, WT Docket Nos. 12-70, 04-356, ET Docket No. 10-142 (filed Mar. 18, 2013); *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Docket No. 12-70, ET Docket No. 10-142, WT Docket No. 04-356, Order on Reconsideration, FCC 18-121 (rel. Aug. 16, 2018 (NTCH AWS-4 Order on Recon.)).

¹⁴ DISH Network Corp., Petition for Waiver of Sections 27.5(j) and 27.53(h)(2)(ii) and Request for Extension of Time, WT Docket No. 13-225, at 1-2, 5-16, 19-20 (filed Sept. 9, 2013) (DISH Petition).

¹⁵ *Id.* at 16-19, 19-20. The AWS-4 construction deadlines are specified in section 27.14(q) of the Commission's rules. 47 CFR § 27.14(q).

¹⁶ DISH Petition at 1-2.

¹⁷ *Id.* at 2, 15. DISH stated that its bidding commitment was contingent on the waiver being granted at least 30 days before the H Block auction commences. *Id.* at 2 n.1, 15.

Commission's rules) is immediately adjacent to the Lower AWS-4 Band (prescribed for uplink under those rules) authorized for use by DISH.¹⁸

4. On September 13, 2013, the DISH Petition was placed on public notice.¹⁹ AT&T Services, Inc., Sprint Corporation, and NTCH, Inc. (NTCH) filed comments, and Sprint and DISH filed reply comments.²⁰ Only NTCH opposed the requests.²¹

5. Short-form applications to participate in the H Block auction were due on November 15, 2013, with upfront payments due on December 18, 2013.²² Based on its review of the short-form applications submitted, the Commission found 23 applicants to be qualified to bid in the auction.²³ These did not include NTCH, which did not file a short-form application.²⁴

6. On December 20, 2013, the Bureau granted the DISH Petition, subject to certain conditions. The Waiver Order first provided DISH with the flexibility to elect whether to use the Lower AWS-4 band for uplink or downlink operations. The Order then extended DISH's final build-out milestone for the AWS-4 licenses from seven to eight years.²⁵ The grant of this relief was conditioned upon DISH's performing two actions.²⁶ First, DISH would be required to bid in the H Block auction at least a net clearing price equal to the aggregate reserve price set for the auction (\$1.564 billion).²⁷ Second, DISH would be required to file its uplink or downlink election, which would apply to all AWS-4 licenses, "as soon as commercially practicable but no later than 30 months [after] the release date of [the

¹⁸ See *Service Rules for Advanced Wireless Services H Block*, Report and Order, 28 FCC Rcd 9483 (2013).

¹⁹ *Wireless Telecommunications Bureau Opens Docket to Seek Comment on DISH Network Corporation's Petition for Waiver and Request for Extension of Time*, Public Notice, 28 FCC Rcd 12987, 12987-88 (WTB 2013) (*DISH Waiver Public Notice*).

²⁰ AT&T supported the DISH proposal as promoting the Commission's flexible use policies. AT&T Services, Inc. Comments at 2. Sprint did not oppose the proposal, but urged that granting the DISH petition should be conditioned upon enforcing DISH's commitment to bid the reserve price in the H Block auction, and requiring DISH to fulfill the cost-sharing obligations to be required of future H Block licensees under the rules. Sprint Corporation Comments at 3-8; Sprint Corporation Reply at 2, 4-7.

²¹ See generally NTCH Comments.

²² See *Auction for H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Rescheduled for January 22, 2014; Notice of Changes to Auction 96 Schedule Following Resumption of Normal Commission Operations*, Public Notice, 28 FCC Rcd 14529, 14529, para. 3 (WTB 2013).

²³ See *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; 23 Bidders Qualified to Participate in Auction 96*, Public Notice, 29 FCC Rcd 77, 77, para. 1 (WTB 2014).

²⁴ See *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands; Status of Short-Form Applications to Participate in Auction 96*, Public Notice, 28 FCC Rcd 16372, 16382-83, Attachs. A and B (WTB 2013).

²⁵ *DISH Waiver Order*, 28 FCC Rcd at 16787-88, 16792-805, paras. 1, 12-43.

²⁶ *Id.* at 16805, paras. 44-46.

²⁷ *DISH Waiver Order*, 28 FCC Rcd at 16805, paras. 44, 46; see also *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014; Notice and Filing Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 96*, Public Notice, 28 FCC Rcd 13019, 13064, para. 172 (WTB 2013) (*Auction 96 Procedures Public Notice*); *NTCH, Inc.; Petition for Reconsideration of Public Notice Announcing Procedures and Reserve Price for Auction of H Block Licenses* (continued)

(*Auction 96*), Memorandum Opinion and Order, 28 FCC Rcd 16108, 16112-13, paras. 13-16 (WTB 2013) (*Auction 96 Procedures Public Notice Recon Order*).

Bureau's *DISH Waiver Order*]."²⁸ Should DISH elect to use its Lower AWS-4 band spectrum for downlink, the Bureau also specified the technical parameters that any such downlink operations would be required to meet in order to prevent DISH from causing harmful interference to licensees in nearby spectrum bands.²⁹ The Bureau rejected NTCH's arguments in opposition to the *DISH Petition*.³⁰

7. On January 22, 2014, NTCH filed an Application for Review of the *DISH Waiver Order*.³¹ On February 6, 2014, DISH filed an opposition to that Application for Review in which DISH not only opposed NTCH's substantive arguments, but also argued that NTCH lacked standing to challenge the *DISH Waiver Order* because it was not a licensee with affected spectrum, and it did not represent that it planned to participate in the H Block auction.³² NTCH filed a reply to the DISH opposition on February 19, 2014.³³

8. The H Block auction (Auction 96) began on January 22, 2014, and closed on February 27, 2014, with DISH winning all of the licenses available in the auction.³⁴

II. DISCUSSION

9. The Application for Review is governed by Section 5(c)(4) of the Communications Act of 1934, as amended (Act),³⁵ and Section 1.115 of the Commission's rules.³⁶ We dismiss NTCH's Application for Review for a lack of standing.

10. DISH argues that NTCH lacks standing under Section 1.115(a) of the Commission's rules because it has not been aggrieved by the Bureau's grant of the *DISH Petition*.³⁷ As an initial matter, NTCH argues that every member of the public has standing to challenge the waiver grant based on a generalized "right and . . . interest in seeing that rules adopted by the FCC are in the public interest,"

²⁸ *DISH Waiver Order*, 28 FCC Rcd at 16805, paras. 44-45.

²⁹ *Id.* at 16798-801, 16806, paras. 26-33, 47.

³⁰ *Id.* at 16807-09, paras. 50-54.

³¹ See Application for Review at 1, 14. NTCH also submitted a supplement to its Application for Review outside of the 30-day filing window specified in Section 1.115(d), 47 CFR § 1.115(d), for the filing of an application for review and any supplement thereto. See Supplement to NTCH, Inc.'s Application for Review, WT Docket No. 13-225 (filed Apr. 17, 2014) (NTCH Supplement).

³² Opposition of DISH Network Corporation to NTCH's Application for Review, WT Docket No. 13-225, at 1, 2-6, 7 (filed Feb. 6, 2014).

³³ NTCH Inc.'s Reply to Opposition, WT Docket No. 13-225, at 1, 7 (filed Feb. 19, 2014) (NTCH Reply).

³⁴ See *Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Closes; Winning Bidder Announced for Auction 96*, Public Notice, 29 FCC Rcd 2044, 2044, para. 1, Attach. A (WTB 2014); FCC, Wireless Telecommunications Bureau, Auction 96: H Block Summary (Feb. 28, 2014), http://wireless.fcc.gov/auctions/default.htm?job=auCTION_summary&id=96. The winning bidder, American H Block Wireless L.L.C., is a wholly owned direct subsidiary of DISH Wireless Holding L.L.C., which is a wholly owned direct subsidiary of DISH Network Corporation.

³⁵ 47 U.S.C. § 155(c)(4).

³⁶ 47 CFR § 1.115.

³⁷ DISH Opposition at 2. DISH also argues that NTCH failed to serve its Application for Review on DISH as required by Commission rules. See DISH Opposition at 2 n.4 (citing 47 CFR §§ 1.47, 1.115(f)). While our rules require service upon parties to the proceeding, 47 CFR § 1.115(f), DISH received actual notice of NTCH's filing and was able to timely respond to NTCH's application.

though it fails to cite any legal authority for this proposition.³⁸ We reject NTCH's argument because it fails to recognize the distinction between (1) standing to file comments in response to a waiver request; and (2) standing to file an application for review. For a waiver proceeding, the Commission may, but does not have to, allow the public or affected parties to submit comments.³⁹ By contrast, both the Commission's rules and the Act provide only for a person "aggrieved" by an action taken on delegated authority to file an application for review by the Commission.⁴⁰ Thus, contrary to NTCH's contention, standing does not extend to every member of the public.

11. Section 5(c)(4) of the Act provides that "[a]ny person aggrieved by any . . . order, decision, report or action [made or taken pursuant to delegated authority] may file an application for review by the Commission."⁴¹ In interpreting the term "aggrieved," the Commission has required the applicant to allege facts sufficient to: (1) show an injury; (2) demonstrate a direct causal link between the challenged action and its alleged injury; and (3) show that the injury would be prevented or redressed by the requested relief.⁴²

12. NTCH asserts on reply that it has standing based on its "thwarted plan to participate in the H Block auction."⁴³ Specifically, NTCH claims that it "had every intention of seeking to acquire PCS licenses in that auction until the Commission stacked the deck in DISH's favor by" two separate actions: (1) "allowing DISH . . . the flexibility" to elect between uplink/downlink status for the adjacent AWS-4 spectrum, and (2) in an earlier Bureau order from which NTCH is separately seeking Commission review, ⁴⁴ setting the reserve price for the H Block auction so high as to "effectively price[] most carriers, including NTCH, out of the market."⁴⁵ NTCH argues that "[t]he setting of the reserve price for the H Block auction was tied directly to the grant of the waivers sought here," and thus that it "cannot challenge

³⁸ NTCH Reply at 2.

³⁹ See 5 CFR § 1.925(c) ("The Commission, in its discretion, may give public notice of the filing of a waiver request and seek comment from the public or affected parties."); see also *id.* § 1.45(b) (imposing no restrictions on who may file an opposition to a waiver request). For the *DISH Petition*, the Bureau specifically stated that "[a] party or interested person" may file comments on the waiver request. *DISH Waiver Public Notice*, 28 FCC Rcd at 12988.

⁴⁰ 47 CFR § 1.115(a); 47 U.S.C. § 155(c)(4).

⁴¹ 47 U.S.C. § 155(c)(4); accord 47 CFR § 1.115(a) ("Any person aggrieved by any action taken pursuant to delegated authority may file an application requesting review of that action by the Commission. . . . Any application for review which fails to make an adequate showing in this respect will be dismissed.").

⁴² *K Licensee, Inc.*, Memorandum Opinion and Order, 31 FCC Rcd 841, 842, para. 3 (2016); accord *New Jersey Public Broadcasting Authority Request to Cancel License for Translator DW276BX, Pompton Lakes, New Jersey*, Memorandum Opinion and Order, 29 FCC Rcd 5558, 5558-59, paras. 2-3 (2014). The Commission based this interpretation on the U.S. Supreme Court's test for constitutional standing. *E.g., K Licensee, Inc.*, 31 FCC Rcd at 842, para. 3 n.8 (citing *Duke Power Co. v. Carolina Envtl. Study Grp., Inc.*, 438 U.S. 59 (1978)).

⁴³ NTCH Reply at 1; accord *id.* at 1-3. NTCH also states that it still plans to bid on the AWS-4 spectrum based on its assumption that the Commission will grant its petitions for reconsideration of the *AWS-4 Report and Order* and the *AWS-4 Order of Modification*. *Id.* at 2-3. See *NTCH AWS-4 Order on Recon.*

⁴⁴ On September 13, 2013, the Bureau released a public notice establishing procedures for an auction of the H Block bands (1915-1920 MHz and 1995-2000 MHz) and set an aggregate reserve price of \$1.564 billion. See *Auction 96 Procedures Public Notice*, 28 FCC Rcd at 13064, para. 172. The Bureau subsequently denied NTCH's petition for reconsideration of that Public Notice. See *Auction 96 Procedures Public Notice Recon Order*, 28 FCC Rcd at 16110-11, 16114, paras. 9, 21. On December 27, 2013, NTCH filed an application for review of that Order. See NTCH, Inc.'s Application for Review, AU Docket No. 13-178 (filed Dec. 27, 2013). See also *infra* note 52.

⁴⁵ NTCH Reply at 1-2.

the . . . H Block proceedings without also challenging the grant of the waiver.”⁴⁶ Finally, NTCH asserts that grant of the DISH waiver “may adversely affect its rights as AWS-4 licensee down the road when those licenses are ultimately opened to competitive bidding.”⁴⁷

13. NTCH lacks standing because it has failed to demonstrate any direct causal link between the Bureau’s decision to grant DISH’s petition for waiver and any actual or concrete injury to NTCH. As DISH points out, NTCH does not claim to be a licensee operating on adjacent spectrum that might be adversely affected by DISH’s potential use of the Lower AWS-4 band for downlink rather than uplink transmission.⁴⁸ Nor does NTCH assert any injury from the waiver extending DISH’s construction period for its AWS-4 licenses. To the extent NTCH argues that it has standing because grant of the DISH waiver “affects the value of the adjacent H Block,”⁴⁹ we find such a claim to be insufficient to confer standing. NTCH has not demonstrated the required direct causal link between grant of the DISH waiver petition and any alleged injury to it, or that such injury will be prevented or redressed by denying DISH such relief. As noted above, the deadline for the filing of short-form applications required to participate in the H Block auction was November 15, 2013. The Bureau did not act on DISH’s waiver petition until December 20, 2013. NTCH made a voluntary, business decision not to participate in the H Block auction by not filing a short-form application, which was due *prior* to the adoption of the Bureau’s order for which it is seeking review here. Thus, because NTCH “itself chose not to seek to qualify to bid for the licenses” in the H Block auction, it lacks standing as a party aggrieved by the subsequent grant of the DISH waiver.⁵⁰

14. Moreover, to the extent NTCH argues that the Bureau’s public notice, setting what it asserts was an “unprecedentedly high” reserve price in the H Block auction proceeding, “effectively priced most carriers, including NTCH, out of the market,”⁵¹ that argument is the subject of NTCH’s application for review filed in a separate proceeding.⁵² In any event, NTCH has failed to demonstrate how DISH’s commitment to bid a specific amount equal to the *aggregate* reserve price for all H Block licenses (much less the Bureau’s establishment of that aggregate reserve price in a wholly separate order)

⁴⁶ *Id.* at 2.

⁴⁷ *Id.* at 3.

⁴⁸ DISH Opposition at 2.

⁴⁹ Application for Review at 11; NTCH Reply at 1-3.

⁵⁰ See *Applications of Alaska Native Wireless, L.L.C.*, Order, 18 FCC Rcd 11640, 11644-45, paras. 11-12. See also *High Plains Wireless, L.P. v. FCC*, 276 F.3d 599 (D.C. Cir. 2002) (no standing with respect to licenses for which challenger did not compete). Nor is this a situation in which NTCH would have been forced to bid against an allegedly invalid application, or which it has claimed that it would have subjected itself as a winning bidder to a divestiture or other requirement that would have precluded its auction participation as a practical matter. See *Alvin Lou Media, Inc. v. FCC*, 571 F.3d 1 (D.C. Cir. 2009).

⁵¹ NTCH Reply at 2-3.

⁵² NTCH has filed a separate Application for Review of the Bureau order denying NTCH’s Petition for Reconsideration of Bureau’s Public Notice setting the H Block reserve price. See NTCH, Inc.’s Application for Review, AU Docket No. 13-178 (filed Dec. 27, 2013). NTCH’s challenge to the *Auction 96 Procedures Public Notice Recon Order* has been resolved in a separate order. See *NTCH, Inc., Application for Review of Public Notice Announcing Procedures and Reserve Price for Auction of H Block Licenses (Auction 96)*, AU Docket No. 13-178, Memorandum Opinion and Order, FCC 18-122 (rel. Aug. 16, 2018). To the extent that NTCH argues that the proceedings on the H-Block reserve price and the instant waiver for uplink flexibility are linked (NTCH Reply at 2), NTCH’s challenge to the reserve price decision in the earlier-issued Procedures PN cannot confer standing to challenge the decision to grant a waiver of technical requirements for a wholly separate band.

would have caused NTCH to be “priced . . . out of the market” for any *specific* H Block licenses.⁵³ Because NTCH fails to allege any injury fairly traceable to the Bureau’s decision to permit DISH the flexibility to use the Lower AWS-4 block for uplink operations, the relief requested, i.e., reversal of the order granting the DISH petition, was properly denied.

15. NTCH also incorrectly suggests that it has standing because it remains interested in acquiring AWS-4 spectrum when it is ultimately made available for other applicants and that this decision to grant the DISH Waiver could affect its rights as an AWS-4 licensee.⁵⁴ NTCH is not an AWS-4 licensee. NTCH’s claim turns on the wholly speculative assumptions that the Commission might eliminate DISH’s terrestrial authority, that it might thereafter make this spectrum available for non-AWS-4 licensees, and that it might determine after further proceedings to do so by auctioning licenses for terrestrial operations in this band, notwithstanding the Commission’s prior determination that separate MSS and terrestrial broadband licensees cannot co-exist in that band.⁵⁵ Such unfounded speculation does not establish any actual or imminent injury.⁵⁶ Therefore, this claim also provides no basis for establishing that NTCH has standing to challenge the Bureau’s decision to grant the DISH Waiver in particular, which is premised on the existing rules under which DISH, not NTCH, is the Commission’s sole AWS-4 licensee.

III. CONCLUSION

16. For the reasons set forth above, we conclude that NTCH has failed to establish standing for seeking Commission review of the Bureau’s *Memorandum Opinion and Order*, and accordingly dismiss the Application for Review. As a result, we need not address the merits of NTCH’s challenge to the Bureau’s order.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303(r), and Section 1.115 of the Commission’s Rules, 47 CFR § 1.115, that the Application for Review filed by NTCH, Inc. on January 22, 2014, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁵³ The only minimum threshold for bidding on an individual license in the H Block auction was the “minimum opening bid” amount—an individualized minimum for placing an opening bid on a license calculated by a factor ranging from less than \$.01/MHz-pop to \$.16/MHz-pop (depending on the license)—a requirement and valuation to which NTCH had no objection. *See Auction of H Block Licenses in the 1915-1920 MHz and 1995-2000 MHz Bands Scheduled for January 14, 2014; Notice and Filing Requirements, Reserve Price, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 96*, Public Notice, 28 FCC Rcd 13019, 13065, paras. 176-77 (WTB 2013). While the aggregate reserve price was calculated by a factor of \$.50/MHz-pop (yielding an aggregate value for the total license pool of \$1.564 billion), that price was not applied on license-by-license basis, and the reserve price requirement did not preclude bidders from placing bids on any individual license that were less than that license’s proportionate share of the aggregate reserve price.

⁵⁴ NTCH Reply at 2.

⁵⁵ *See AWS-4 NPRM*, 27 FCC Rcd at 3584, para. 71.

⁵⁶ *N.Y. Reg’l Interconnect, Inc. v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011); *see also Pub. Citizen, Inc. v. NHTSA*, 489 F.3d 1279, 1292-93 (D.C. Cir. 2007).