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**LEGEND**

Taxpayer =  
State A =  
\$a =  
Tax Years =  
Date 1 =  
Year 1 =  
Payments =  
  
Date 2 =  
Prior Ruling =  
Non C-bands =

Dear :

This letter responds to a request for a private letter ruling dated August 1, 2022, submitted by Taxpayer's authorized representatives. Taxpayer requests two rulings relating to the repurposing of certain portions of the electromagnetic spectrum.

**FACTS**

Taxpayer is a State A limited partnership classified as a partnership for federal income tax purposes. Taxpayer uses a calendar year accounting period and an accrual method of accounting. Taxpayer operates commercial communications satellites directly or indirectly through entities that are disregarded as separate from Taxpayer for federal income tax purposes.

Taxpayer, including its disregarded entities, is in the business of providing a wide range of communication services to customers using its commercial satellites and other

infrastructure. In connection with its communications services, Taxpayer has rights to transmit information in certain segments of the electromagnetic spectrum (the "spectrum") within the United States and other countries. Many of Taxpayer's rights to transmit information in the United States are granted by the Federal Communications Commission (the "FCC") under licenses, including licenses to transmit information to and from certain of its satellites, ground-based facilities, and other related equipment in the 3.7-4.2 GHz frequency band (the "C-band"). Taxpayer uses the C-band to provide communication services to customers.

Pursuant to its authority under 47 U.S.C. § 309(j) and as required by the *Making Opportunities for Broadband Investment and Limiting Excessive and Needless Obstacles to Wireless Act* (MOBILE NOW Act),<sup>1</sup> the FCC is repurposing spectrum in the C-band—currently used domestically by satellite operators to transmit signals to Earth-based stations throughout the United States—for other uses including the fifth generation of wireless technology (5G).

On March 3, 2020, the FCC issued a Report and Order<sup>2</sup> (FCC Order) adopting rules to clear the lower 300 MHz of the C-band; repack existing satellite operators into the upper 200 MHz of the C-band; designate 20 MHz to serve as a guard band; and auction licenses to use the lower 280 MHz for flexible terrestrial use including 5G wireless services. The FCC will issue new overlay licenses to wireless broadband service providers that place winning bids (Overlay Licensees). These overlay licenses will authorize Overlay Licensees to transmit over the lower 280 MHz within geographic areas in which the current holders of C-band licenses (Incumbent Licensees) operate. The FCC Order requires Incumbent Licensees to cease operating on the lower 300 MHz of the C-band by December 5, 2025 (Deadline). Under the FCC Order, as an "Incumbent Licensee," Taxpayer is required to clear the lower 300 MHz of the C-band by the Deadline. The FCC order further provides for incentive payments for those Incumbent Licensees that clear the lower 300 MHz of the C-band before certain designated dates that fall much earlier than the Deadline.

The Service has issued Prior Ruling to address certain tax consequences to Taxpayer of the FCC Order. To the extent that any facts set forth in the FACTS section of Prior Ruling are relevant to the present letter, they are incorporated herein by reference.

In Prior Ruling, the Service has concluded that, for purposes of section 1033 of the Internal Revenue Code (Code)<sup>3</sup>, certain of Taxpayer's assets (Converted Assets) are being involuntarily converted pursuant to the FCC Order. Taxpayer's Converted Assets consist of satellites used in Taxpayer's business to receive and transmit

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<sup>1</sup> MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 601 et seq. (2018).

<sup>2</sup> FCC 20-22, Report and Order and Order of Proposed Modification, Released Mar. 3, 2020, GN Docket No. 18-122.

<sup>3</sup> Unless specified otherwise, all section references are to the Internal Revenue Code in effect on the date when this letter ruling is issued.

information in the C-band between ground equipment at various locations on the earth, associated ground equipment and the rights to use the C-band in which the satellites and ground equipment operate.

In Year 1, Taxpayer entered into an agreement with a private, non-governmental entity that had acquired rights to operate in the portion of the C-band that Taxpayer is clearing in an auction held pursuant to the FCC order (New Overlay Licensee). Under the agreement, New Overlay Licensee will make Payments to Taxpayer if Taxpayer clears specified portions of the lower 300 MHz in certain geographic areas by target dates that fall well in advance of the dates designated in the FCC order. New Overlay Licensee may be able to commence using the cleared frequencies earlier if Taxpayer clears them by the target dates.

New Overlays Licensee will make Payments directly to Taxpayer after Taxpayer meets all agreed-upon requirements to clear relevant frequencies in the subject geographic locations. Their agreement specifies the geographic areas in which Taxpayer currently provides services in relevant frequencies of the C-band. The agreement sets target dates for clearing each area. Taxpayer must perform its clearing obligations under the agreement only with respect to a particular area by the target date in order to receive Payments with respect to that area.

The amounts of Payments are subject to adjustment based on several factors, including the exact date on which Taxpayer clears a designated area, and New Overlays Licensee's ability to commence its operations in relevant frequencies within a certain amount of time after Taxpayer has cleared those frequencies in the area. New Overlay Licensee's obligation to pay Taxpayer any Payments is subject to certain contingencies, including whether certain other C-band users have cleared relevant frequencies in the designated areas by specified dates. Subject to these contingencies, if Taxpayer clears relevant frequencies in a sufficient number of designated areas by the applicable target dates, it is eligible to receive further Payments. The maximum amount of Payments that Taxpayer may receive under the agreement is approximately \$a, which Taxpayer would expect to receive in multiple payments in Tax Years.

Using Payments as well the incentive payments provided under the FCC order, Taxpayer will acquire new property and upgrade existing equipment and facilities (Non C-band Assets). Non C-band Assets consist of new satellites that operate in the Non C-bands (Non C-band satellites), new ground equipment or improvements made on existing ground equipment that are necessary to operate those satellites (Non C-band equipment), and capitalized costs that Taxpayer will incur to secure and maintain rights to use the bands of the spectrum in which Taxpayer's new Non C-band satellites and Non C-band equipment will operate (Non C-band license costs).

Although Non C-band satellites operate in the Non C-bands (and not the C-band),

they will perform the same function as Taxpayer's existing C-band satellites once operational. Like Taxpayer's existing C-band satellites, the new Non C-band satellites will receive communication signals from equipment on the ground, amplify those signals, and transmit them to another ground station. Although a given customer will already have, or will need to acquire, ground equipment that is specific to a particular frequency (or have such equipment provided to it by Taxpayer), the nature of the services provided on Non C-band satellites and the related Non C-band equipment will be the same as those provided on Taxpayer's existing C-band satellites and the related C-band equipment. Taxpayer does not separately market services provided in the Non C-bands from those provided in the C-band. Taxpayer's entire array of satellite communication services can be provided in the C-band and the Non C-bands. Accordingly, the new Non C-band satellites and Non C-band equipment will perform the same function as Taxpayer's existing C-band satellites and related equipment, receiving and transmitting information in the spectrum.

In addition, the new Non C-band satellites will have the same relationship to Taxpayer's business as Taxpayer's existing C-band satellites. Consistent with the strong similarities in physical qualities and operation between the different types of satellites, there will be no distinction between Taxpayer's personnel who will work with the new Non C-band satellites and those who work with the existing C-band satellites. The same engineers will control and operate the new Non C-band satellites as those that control and operate Taxpayer's existing C-band satellites. The same management and administrative personnel will oversee and carry out the activities of Taxpayer with respect to each type of satellites. The same sales personnel will market the services of each type of satellite using the same strategies. Because of the close physical similarities and the fact that the satellites are used to provide the same types of services, the satellites are subject to the same business risk, regardless of the frequencies in which they operate.

Non C-band license costs consist of costs incurred in connection with acquiring or maintaining underlying Non C-band spectrum rights. Taxpayer incurs various costs associated with applying for such licenses and preserving the right to utilize such licenses. These Non C-band license costs include costs associated with making filings and various costs that may need to be incurred due to requirements that Taxpayer use licensed spectrum within a certain time period after receiving the license or forfeit the license.

Any functional differences between the Non C-band Assets and the Converted Assets are generally limited to the size (*e.g.*, antennae, batteries), discrete qualities of certain components (*e.g.*, the frequency of the local oscillator) and, in some cases, the inclusion of equipment that operates in the frequencies that are neither the C-band nor the Non C-band. In each case, these functional differences are required to provide efficient service to customers in the Non C-bands instead of the C-band.

Taxpayer thus represents that the Non C-band Assets will have the same function and use as the Converted Assets. The new Non C-band satellites will be physically the same as the satellites being converted, other than differences that reflect technological advances, different manufacturers, and those needed to operate efficiently in different frequencies of the spectrum. Additionally, the new Non C-band Assets will have exactly the same relationship to the Taxpayer's business as the Converted Assets.

Taxpayer requests the following rulings (collectively, the "Requested Rulings"):

- (1) Payments that Taxpayer receives from New Overlay Licensee under the agreement are eligible for nonrecognition of gain under section 1033(a)(2)(A) to the extent such amounts do not exceed the cost of property purchased by Taxpayer that is similar or related in service or use to the Converted Assets, during the period described in section 1033(a)(2)(B); and
- (2) The new Non C-band Assets constitute eligible replacement property with respect to the Converted Assets for purposes of section 1033(a)(2)(A).

#### LAW AND ANALYSIS

Section 1033(a)(2)(A) generally provides that, if property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted into money and the taxpayer, within the period provided in section 1033(a)(2)(B) and for the purpose of replacing such property, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain must be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock.

As indicated above, Prior Ruling issued to Taxpayer held, among other things, that the Converted Assets are being involuntarily converted pursuant to the FCC Order. This ruling letter is based on that holding in Prior Ruling.

#### Application of Section 1033 to Payments

Taxpayer is eligible to receive Payments if it clears the lower 300 MHz of the C-band in certain geographic areas by certain dates well in advance of the dates designated in the FCC order. Payments are directly related to the FCC's repurposing of the lower 300 MHz of the C-band and are a direct consequence of the involuntary conversion of Taxpayer's Converted Assets. We thus conclude that Payments are eligible for nonrecognition of gain pursuant to section 1033(a)(2)(A)

to the extent such amounts do not exceed the cost of property purchased by Taxpayer that is similar or related in service or use to the Converted Assets during the period described in section 1033(a)(2)(B).

The fact that Payments are to be received directly from a third party pursuant to a private agreement will not affect application of section 1033 to such payments. The statute and the regulations do not impose restrictions as to the source of the amounts realized on the involuntary conversion of property.

The Service has consistently held that section 1033 nonrecognition can apply to cash received from a third party (as opposed to a governmental entity) in connection with an involuntary conversion of property. See, e.g., Rev. Rul. 81-180, 1981-2 C.B. 161 (cash proceeds the taxpayer received from a private entity in exchange for land the taxpayer expected to be condemned were received in connection with an involuntary conversion pursuant to section 1033); see also PLR 202001016 (Oct. 8, 2019) (concluding that the sale of assets, including FCC licenses, to a third party in the expectation of being forcibly "repacked" to different spectrum frequencies if the taxpayer did not participate in an FCC auction of its rights, qualified as an involuntary conversion under section 1033).

Payments represent amounts received in connection with the involuntary conversion of the Converted Assets, irrespective of the source of the payments. Moreover, the fact that Taxpayer must finish clearing the lower 300 MHz of the C-band in certain areas earlier than required to receive Payments does not change the application of section 1033 to these payments. Neither the identity of the payor nor the early timing requirements will cause any Payments received by Taxpayer to be treated as anything other than amounts received in connection with an involuntary conversion that are eligible for nonrecognition of gain under section 1033.

#### Application of Section 1033 to the Non C-band Assets

Section 1033 provides a means by which a taxpayer whose enjoyment of his property is interrupted without his consent may arrange to have that interruption ignored for tax purposes, by returning as closely as possible to his original position. *Maloolf v. Commissioner*, 65 T.C. 263, 270 (1975). What is required is a reasonable degree of continuity in the nature of the assets as well as in the general character of the business. *Id.* Thus, if the replacement property continues the nature and character of the taxpayer's investment in, or use of, the converted property, it qualifies as replacement property for purposes of section 1033 and gain is deferred.

Replacement property will be considered to be similar or related in service or use to the converted property if the "physical characteristics and end uses of the converted and replacement properties are closely similar." Rev. Rul. 64-237, 1964 C.B. 319. The Tax

Court in *Malloof* has explained the similar or related in service or use requirement as follows:

[T]he reinvestment must be made in substantially similar business property. Stated differently, the statute requires a "reasonably similar continuation of the petitioner's prior commitment of capital and not a departure from it." While it is not necessary to acquire property which duplicates exactly that which was converted, the fortuitous circumstance of involuntary conversion does not permit a taxpayer to change the character of his investment without tax consequences.

65 T.C. at 269.

Property is "similar or related in service or use to the property so converted" primarily if there is sufficient "similarity in the relationship of the services or uses which the original and replacement properties have to the taxpayer-owner." Rev. Rul. 64-237. This analysis depends on the similarities between the replacement property and the converted property in terms of the services provided to the taxpayer, the nature of the business risks connected with the properties, and the activities that properties demand of the taxpayer. See also *Johnson v. Commissioner*, 43 T.C. 736 (1965); *Loco Realty Co. v. Commissioner*, 306 F.2d 207 (8th Cir. 1962); *Lian/Record Inc. v. Commissioner*, 303 F.2d (2nd Cir. 1962).

If property at issue is used by the taxpayer owner, the analysis relies on the "functional use test," which examines whether "the physical characteristics and end uses of the converted and replacement properties were closely similar." See Rev. Rul. 64-237; see also Rev. Rul. 77-192, 1977-1 CB. 249. This standard does not require sameness between the converted and replacement property, but only close similarity. Rev. Rul. 73-225, 1973-1 C.B. 32.

The Converted Assets include spectrum rights, ground-based equipment, and satellites used to provide satellite communication services in the C-band. Taxpayer expects to acquire new Non C-band Assets that will be used to provide the same communications services in the Non C-bands as the Converted Assets did in the C-band.

The new Non C-band satellites and Non C-band equipment will be physically similar to, and function in the same way as, the existing C-band satellites and related ground equipment. Both the Non C-band satellites and Non C-band equipment will be operated by the same personnel and have their services marketed by the same personnel in the same way and be subject to the same risks as Taxpayer's existing C-band satellites and related ground equipment. Taxpayer will incur Non C-band license costs to acquire and maintain the Non C-band usage rights, just as it did with respect to the C-band.

The new Non C-band satellites are similar or related in service or use to Taxpayer's C-band satellites that are being converted, each of which provide the same communication services, but merely operate in different frequencies. The new Non C-band satellites perform the same communication services function and are subject to the same regulatory framework as Taxpayer's existing C-band satellites. Finally, the new Non C-band satellites and equipment will provide the same communications services as the C-band satellites and equipment, although the former will operate in new frequencies, possibly featuring certain technological advances, and with features necessary to efficiently operate in the new frequencies.

Additionally, Taxpayer uses different portions of the spectrum seamlessly in the operation of its business. There is no separate "C-band business" or "Non C-band business." Non C-band License Costs essentially represent costs associated with replacing rights with respect to the underlying C-band that were, themselves, converted. That fact supports treating the new Non C-band License Costs as additional qualified replacement property.

Taxpayer's new Non C-band Assets may reflect some technological advances and feature differences relative to the Converted Assets that are necessary to operate in the Non C-bands most efficiently. Nevertheless, the new Non C-band Assets will provide the same communication services as Taxpayer's existing satellites and equipment that operate in the C-band. The new Non C-band Assets will share the same business functions (including marketing and operations) with Taxpayer's current assets related to the C-band. These differences, while noted, do not make the Non C-band Assets dissimilar to Taxpayer's existing C-band satellites for purposes of section 1033.

Accordingly, for purposes of section 1033, Taxpayer's investments in new Non C-band Assets constitute the purchase of "property similar or related in service or use" to the Converted Assets. Taxpayer may elect under section 1033 not to recognize any gain realized with respect to the Converted Assets to the extent Taxpayer's investment in new Non C-band Assets is within the time period provided by section 1033(a)(2)(B).

## RULINGS

(1) Payments that Taxpayer receives from New Overlay Licensee under the agreement are eligible for nonrecognition of gain under section 1033(a)(2)(A) to the extent such amounts do not exceed the cost of property purchased by Taxpayer that is similar or related in service or use to the Converted Assets, during the period described in section 1033(a)(2)(B).

(2) The new Non C-band Assets constitute eligible replacement property with respect to the Converted Assets for purposes of section 1033(a)(2)(A).



### CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referred to in this letter.

Except as expressly discussed herein, no opinion is expressed on the basis or effect of Prior Ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Sue-Jean Kim  
Senior Technician Reviewer, Branch 5  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: