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Office of the Secretary
Federal Communications Commission
191 M Street, NW Room 222
Washington, DC 20554

Dear Sir:

Please accept these reply comments in response to the Commission's NPRM 94-32.

For your information, my return address and telephone number are:

James S. Kaplan
2373 NW 185th Avenue #280
Hillsboro, OR 97124
(503) 614-9414

There are 9 copies plus the original, please distribute them accordingly.

Regards,



James S. Kaplan

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

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In the Matter of)
)
Allocation of Spectrum Below) ET Docket No. 94-32
5 Ghz Transferred From)
Federal Government Use)

TO: The Commission

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Reply Comments

James S. Kaplan respectfully submits these reply comments in response to the Notice of Proposed Rulemaking (NPRM) in the above named matter.¹ The NPRM proposes to reallocate the first 50 MHz of spectrum that was preliminarily identified by the National Telecommunications and Information Administration (NTIA) as being subject to immediate reallocation from Federal Government use. These segments include 2390 - 2400 MHz, 2402 - 2417 MHz and 4660 - 4685 MHz. The Notice proposes alternative allocation plans for these segments, as per the mandate of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (August 10, 1993). In the interests of the Amateur Radio Service in the continued public service use of the 2390 - 2400 MHz and 2402 - 2417 MHz segments, which stand to be adversely affected by this proceeding, I state the following:

¹ Allocation of Spectrum Below 5 Ghz Transferred from Federal Government Use, ET Docket No. 94-32, FCC 94-272 (released November 8, 1994), NPRM

The Commission's proposal to reallocate 25 MHz of spectrum at 2390 - 2400 and 2402 - 2417 MHz is flawed in a number of areas. Presumably their position is based on the erroneous preliminary reallocation plan of NTIA. The Commission's opening statement;

“We believe that the allocations proposed herein will benefit the public by providing new services and the enhancement of existing services. These new and enhanced services will create new jobs, foster economic growth, and improve access to communications by industry and the American public.”

is perhaps the most flawed. No agency or commenting party has submitted any proof that the proposed reallocation will create new jobs, foster economic growth, or improve access to communications by industry and the American public nor can they prove that this allocation will enhance the existing Amateur allocations, in reality, any proposed reallocation in these (or any other Amateur allocation) segments will have a definite detrimental affect upon the existing Amateur allocations and will seriously jeopardize public safety, both of which are contrary to the Omnibus Budget Reconciliation Act of 1993² (by which this proposed reallocation is presumably based) and plain common sense. NTIA has been exceptionally remiss in the execution of it's duty to show definitively that this proposal would not disrupt existing or future Amateur use of this band of frequencies.

² See Reconciliation Act Section 114, ARRL Comments II (4) and II (5), 93-32 Appendix D; 2, 3 and 11

2300 - 2450 MHz is allocated to the Amateur service WORLDWIDE by the ITU. The US 13cm allocation is the primary worldwide basis for Amateur satellite operations in this band. Maintaining the US 13cm allocation is critical to remaining compatible with the rest of the world's 13cm Amateur allocations. Domestically 2390 - 2400 MHz is used by Amateurs for Video, Data and Voice. 2400 - 2410 MHz is used for satellite operations by Amateurs. Disruption of the 2400 - 2410 MHz segment would be detrimental to current Amateur satellite operations. 2400 - 2410 MHz should be reallocated to the Amateur Satellite service on an exclusive, primary basis to protect those satellites currently in orbit and to foster future growth in the Amateur Satellite services. The proposal is in error, referring to the identification of 2400 - 2402 MHz as being currently used by the Amateur Satellite Service, in fact 2400 - 2410 MHz is currently being used by or will be used by the Amateur Satellite Service in the near future.

The statement,

“Our principal objective in making this spectrum allocation decision is to ensure that the spectrum is put to it's best and most valued use and that the greatest benefit to the public is attained.”

is erroneous. The principal objective is to generate revenue for the United States Treasury, not to ensure that the spectrum is put to it's best and most valued use nor that the greatest benefit to the public is attained.

The Congress and Commerce Department have decided that the revenue generated by the auction of spectrum is a higher priority than the public safety and the continued use of these segments by the Amateur Service. The best and most valued use of spectrum already allocated to Amateur use is its continued use by the Amateur Service. This use has proved its worth in natural disasters, public safety and the retention of its pool of trained, volunteer radio operators as well as providing an area of spectrum in which entrepreneurs and engineers continually experiment with the state of the art on. The best and most valued use of spectrum already allocated to Amateur use is the reallocation of those spectrum segments to Amateur use on an exclusive, primary basis, or retaining existing secondary Amateur allocations when the sharing of those segments with Amateurs can be achieved without undue interference. NTIA blatantly violates the intent of the Congress and the Omnibus Budget Reconciliation Act of 1993, by proposing the FCC allocate spectrum which would cause harm to the Amateur Service.

The Commission's arbitrary 47 dBuV/m field strength proposal for new allocations would cause undue interference to stations operating in the Amateur Satellite and the Amateur Services. This standard would be inappropriate for users of this band, as well as those in adjacent bands who may cause interference to the Amateur Satellite Service. There is absolutely no technical data to support the use of such power levels and what interference these levels will cause to stations operating in the Amateur Service.

The current population of 2390 - 2400 MHz and 2402 - 2417 MHz cannot afford the added noise nor interference by added band users. The removal of any Government use will only be offset in the near future by the proliferation of Part 15 devices, Microwave ovens, Part 18 devices and increasing Amateur use. Therefore, these band segments simply can not support any additional licensed users. The NTIA believes it can bend the Laws of Physics with enough dollars.

In-Flight Phone Corporation's proposed use of 2390 - 2400 MHz is incompatible with existing Amateur use of that spectrum. Amateur use of 2390 - 2400 MHz includes, Video, Data, Audio and Satellite. This incompatibility would invalidate their proposal. The Engineering Statement supporting In-Flight Phone Corporation's comments base compatibility with Amateur use on false, erroneous and misleading information with no verifiable statistical or real data supporting compatibility with existing amateur use³. Southwestern Bell's assertion that their proposed use of 2390 - 2400 MHz for wireless local loop service would be incompatible with Amateur use of this spectrum should invalidate their proposal. The new PCS service allocations will provide the same service, therefore this would be a redundant, wasteful and harmful reallocation.

PCS and MDS services are incompatible with Amateur use, and therefore should invalidate proposing their use of these segments. Motorola's suggestion

³ Ref. In-Flight Phone Corporation's Comments, ET 94-32, Attachment 1

that 2390 - 2400 MHz or 2300 - 2310 MHz may be suitable for IVHS would be a redundant, wasteful and harmful reallocation. A group of companies including Seiko Communications of America, operating under a Federal Department of Transportation contract, is gearing up to test an IVHS system using state of the art FM Broadcast Subcarrier technology. This system will be operational in the test stages as early as the Second Quarter of 1995. This system being implemented will NOT need any additional spectrum to operate in. The fact that Motorola's implementation of IVHS would be incompatible with Amateur and Amateur Satellites and the fact that other implementations already available that do not require additional allocations of spectrum invalidates Motorola's proposal. Any service not compatible with the Amateur Satellite Service should not be allocated in the same spectrum currently used by the Amateur Satellite Service.

If the Commission and Congress are true in their intent to avoid excessive disruption of the Amateur Services, the Commission will consider exclusive primary allocations to the Amateur Services before consideration of any proposal further populating the spectrum with non-Amateur users.

The proposal is also flawed in that requesting information from potential users their idea of technical constraints, etc., are bound to be in conflict with existing Amateur usage and future Amateur use. The spectrum needs of the Amateur Services are growing, like every other spectrum user, not shrinking.

Therefore, to limit or further reduce Amateur allocations only hurts public service, civil defense, personal communications and other services provided by Amateurs. If anything, the Commission needs to realize this growth and plan appropriately so if any changes in Amateur allocations are to take place they be increased Amateur allocations and the enhancement of current allocations in the form of exclusive primary status and further incentive to prospective licensees and incentives to current licensees to pioneer new methods and modes of communication.

Competitive bidding and the revenue generated from it can not be the best nor most important reasons for reallocating spectrum. The greed of the Congress can be met without further harm to our precious Amateur allocations. It is also quite evident that NTIA disposed with all technical standards proven by time and trial and ignored laws of physics. The result of actions like these will be to make the finite spectrum resources available only to those who can pledge outrageous sums of cash, thus preventing the use by common citizens, pioneers, hobbyists and experimenters, small entrepreneurs and volunteers. The NTIA also chooses to ignore the comments of several groups representing over one-half a million taxpaying Amateurs and others over the greed and selfishness of several large corporations representing only a few select pocketbooks. The Commission itself in Appendix D acknowledges the importance of the Amateur Service, the need for an Amateur allocation in the 13cm band and the incompatibility between Amateur and other users. Is it not enough to ask that the Amateur Service be plagued by the

interference and noise generated by Part 15 and Part 18 devices without introducing the complications of new users and their resultant interference and coordination problems? NTIA also ignores the technical difficulties involved in designing equipment for Amateur use around an allocation without significant contiguous segments.

SUMMARY

The comments of those who claim their use incompatible with Amateur use, including Motorola, Bell Atlantic, Loral/Qualcomm, American Petroleum Institute, Leaco, Wireless Holdings, and Southwestern Bell and those who(appear to) support continued Amateur use, including ARRL, SCRRBA, NARCC, Fusion, IBM and others should show the Commission without a doubt the need for the continued Amateur presence in the 2300 - 2450 Mhz band. The Commission could do no better than to allocate 2390 - 2417 Mhz to the Amateur Service on an exclusive basis, re-evaluate the unused 2310 - 2390 Mhz segment for Amateur secondary use and re-affirm the 2300 - 2310 and 2417 - 2450 Mhz Amateur secondary allocations.