

In addition, the U.K. has taken similar steps toward the transition of FS out of the MSS bands under the assumption that sharing between the two services is feasible.<sup>46</sup> In a submission to the African Regional Telecommunication Development Conference earlier this month, the U.K. administration notes that it, “like most other countries in Europe, has generally undertaken not to implement new FS systems within the 2 GHz bands.” Furthermore, the U.K. also recommends that “[i]t would be useful for national spectrum managers in Administrations in Africa to consider nationally implementing similar strategies aimed at promoting longer term stable conditions for the development of MSS and FS systems in the overall 2 GHz range.”<sup>47</sup>

Given the various approaches adopted in other countries to facilitate the sharing of MSS and FS at 2 GHz, the Commission should consider the effect imposition of relocation rules on MSS in the United States might have in inhibiting the development of an innovative global communications service. The international nature of MSS and the United States’ prior and ongoing efforts to introduce these services require that the Commission consider MSS in a global context and develop rules and policies that are consistent with those being adopted throughout the world.

### **III. THE COMMISSION SHOULD ADOPT THE COMSAT PHASED TRANSITION PLAN**

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<sup>46</sup>*Proposals for the Work of the Conference: Opportunities and Challenges Posed by Mobile Satellite Systems in Africa*, United Kingdom Proposal to African Regional Telecommunication Development Conference (May 2, 1996). In its proposal, the U.K. administration explains that WRC-95 MSS allocation decisions were “based on the consensus view that MSS/FS sharing was generally workable at least during a transitional period.” *Id.* at 4.

<sup>47</sup>*Id.* at 5.

As discussed in the previous section, the FCC should conclude that relocation and reimbursement regulations, such as those adopted in the PCS allocations, are not necessary in conjunction with the spectrum allocation for 2 GHz MSS. Rather the Commission should adopt the phased transition schedule set forth in the Supplemental Comments.

The phased transition plan, which is detailed below, ends in January 1, 2005, after which all BAS and FS operations in the 2 GHz MSS spectrum must cease. This date is reasonable for several reasons. First, incumbent FS operators have been on notice since 1992 that they would eventually have to vacate the spectrum allocated to MSS. In February 1992 the Commission issued its ET NPRM, stating that portions of the spectrum between 1850 and 2200 MHz were being allocated to emerging technologies.<sup>48</sup> Furthermore, the Commission ordered that future applications for new fixed facilities in the proposed emerging technology bands would be granted on a secondary basis only.<sup>49</sup> In October, 1992, the Commission allocated the 1850-1990, 2110-2150, and 2160-2200 MHz bands for emerging technologies.<sup>50</sup>

In addition, in its *ET NPRM*, the Commission set forth its proposed rules for relocating incumbents in this spectrum whose operations interfered with new users where sharing did not prove to be feasible. Thus, FS operators in this spectrum have been on notice by the Commission since early 1992 that they would have to relinquish their spectrum position in the event a new service was assigned to these bands that could eventually interfere with the FS users' operations.

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<sup>48</sup>See *ET NPRM*, 7 FCC Rcd at 1542.

<sup>49</sup>See *ET NPRM* at 1545. In May 1992, the Commission staff issued a public notice clarifying that this policy would not apply to applications for certain modifications of facilities licensed prior to the notice. See *Two Gigahertz Fixed Microwave Licensing Policy*, Public Notice, 1992 FCC LEXIS 2603 (May 14, 1992).

<sup>50</sup>See *First ET Order*, 7 FCC Rcd at 6890

That notice was reinforced in March of 1992 when WARC 1992 allocated the 1980-2010 and 2170-2220 MHz bands to MSS on a worldwide basis commencing in 2005. Access to MSS spectrum in the U.S., however, commenced on January 1, 1996 and included the 1970-1980 and 2160-2170 MHz bands as well. In the absence of detailed studies, the prevailing assumption at that time was that sharing between FS and MSS was not feasible. Thus, FS and BAS operators had to assume at that point that they would eventually have to vacate these bands once MSS was specifically allocated to these bands by the United States.

By 2005, therefore, incumbent 2 GHz operators will have been on notice of their likely relocation for 13 years. The Commission has stated that ten years -- much less 13 -- is a sufficient length of time for incumbents to plan for and effectuate their relocation.<sup>51</sup>

Indeed, the Commission noted that it has given incumbents in some services significantly less time in which to relocate.<sup>52</sup>

Second, a deadline of 2005 will allow the FS and BAS incumbents to move without incurring costs beyond those that they would incur in the normal course of business. The Commission has recognized that by 2005 most of the equipment used by most FS incumbents should be reasonably amortized or in need of replacement by digital equipment.<sup>53</sup> The incumbents, therefore, would need to replace their equipment during the time period between now and 2005 regardless of their need to relocate. Accordingly, by establishing a 2005

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<sup>51</sup>See *Microwave Relocation Order* at ¶ 66.

<sup>52</sup>For example, FS in the 12 GHz band had only five years to relocate before becoming secondary to the Direct Broadcast Satellite Service. *Id.*

<sup>53</sup>See *Microwave Relocation Order* at ¶ 67 (citing Comments of APCO, which acknowledge the need for FS licensees to upgrade to digital equipment).

termination date for FS and BAS operations, the Commission will provide for the incumbents to vacate the MSS bands in the most cost-efficient manner.

The specifics of the phased transition plan supported by the Joint Commenters are as follows. The migration from the MSS bands by incumbent licensees would be in two phases. During Phase I, which would run from the present through January 1, 2000, the MSS community and FS licensees would work out the details of sharing methodologies to protect existing primary FS systems. On a complementary track, MSS interests and BAS licensees would work together to resolve issues surrounding the returning of equipment or migration of licensees in BAS Channels 1 and 2 (1990-2025 MHz) through engineering solutions to accommodate the MSS uplinks. BAS licensees in Channel 1 (1990-2008 MHz) would be required to vacate the spectrum by January 1, 2000.

During Phase II, which would begin on January 1, 2000, and end on January 1, 2005, the FS licensees would gradually transition from the MSS downlink (2165-2200 MHz) as part of the natural process of upgrading or enhancing their facilities, virtually all of which should be amortized by that time. After January 1, 2005, any remaining FS operations would be required to cease operation. Similarly, BAS Channel 2 licensees would be required to vacate the MSS uplink by January 1, 2005.<sup>54</sup>

Given the above, the Joint Commentors believe that FCC licensing policies toward BAS and FS through the year 2000 should be designed not to complicate the problem any further. Accordingly, an immediate freeze on FS licensing in the 2165-2200 MHz band as proposed in the Supplemental Comments should be issued. Such an action will facilitate the

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<sup>54</sup>As of January 1, 2000, BAS Channel 2 licensees would assume secondary status to MSS in order to accommodate (any second generation) MSS systems placed into operation before 2005.

introduction of MSS by preventing an increase in the number of FS systems with whom MSS will have to share the band for an extended period. Moreover, a freeze will allow a more orderly and natural migration from this band as FS licensees replace, upgrade, and enhance older equipment. As existing FS licensees' authorizations expire, they should be renewed in other allocations above 2 GHz *or* in existing spectrum for a period not to extend beyond January 1, 2005, the date by which all FS licensees would have to vacate the 2165-2200 MHz band. The only modifications permitted to existing FS licenses should be minor changes of the type set forth in Sections 22.602(i) and 101.81 of the Rules,<sup>55</sup> *i.e.*, those which do not increase the FS licensees' protection requirements, their susceptibility to interference from MSS, or potential to cause interference to MSS subscribers.

The Joint Commentors also believe that the licensing of BAS operations in Channels 1 and 2 should be frozen immediately. Similarly, the only modifications to existing BAS facilities that should be permitted are minor modifications. The Joint Commentors support the proposal in the *Supplemental Comments* that BAS renewals prior to January 1, 2000 in Channel 1 should at most be extended only through that date, so as to facilitate the phased transition plan. BAS licensees in Channel 2 would become secondary after January 1, 2000, under that plan, and any renewals extending beyond that date should be only on a secondary basis. These BAS licensing policies will benefit the public interest by minimizing the burden on broadcasters that have to relocate from Channels 1 and 2.

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<sup>55</sup>Specifically, changes that reduce power, antenna height, structure height, or bandwidth; negligible changes in location (< 2"); small increases in antenna or structure height; minor changes in ground elevation; or minor equipment modifications.

#### IV.

#### **THE FCC SHOULD PROMPTLY CONFORM THE U.S. ALLOCATIONS TABLE TO THE 95-WRC FINAL ACTS AND ACCEPT MSS APPLICATIONS**

As the Supplemental Comments point out, the U.S. Delegation took the lead at WRC-95 to expand the 2 GHz MSS allocation in Region 2 to accommodate other spectrum allocation actions taken in this country, *e.g.*, PCS at 1850-1990 MHz. The U.S. representatives also spearheaded the effort to accelerate worldwide the availability of the 2 GHz allocation for the MSS service. At WRC's end, the conferees from almost 140 countries consented to change the Table of Frequency Allocations that would provide for a five-year advance of the commencement of global MSS, from 2005 to the year 2000. In addition, the *WRC-95 Final Acts* resolved to study ways in which MSS operations could exist compatibly with the fixed service current in the MSS band and, given the fact that studies had shown sharing to be feasible, WRC-95 also resolved to draw up plans for the "gradual transfer" of fixed systems out of the MSS bands, taking into account technical, operational and economical considerations.<sup>56</sup>

Given the lead taken by the U.S. at WRC-95, it is only logical that the FCC should make the allocation in the U.S. consistent with the new international allocation adopted at WRC-95. At the same time, consistent with international efforts carrying out the resolutions and recommendations of the WRC-95 Final Acts, the FCC should support the work being done to refine coordination methodologies in the ITU-R study groups.

Upon adopting the proposed 2 GHz allocation to MSS, the Commission immediately should open a window for the filing of applications for MSS satellite systems. This action will accomplish two things: first, it will foster the timely development of service rules and

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<sup>56</sup>Final Acts WRC-95, res. COM5-10.

will help ensure that the eventual MSS licensees will be poised to provide the public the benefits of MSS on January 1, 2000, or as soon thereafter as possible. Second, the filing of specific system proposals will advance sharing discussions with FS incumbents. Once prospective satellite system parameters are made available for evaluation, FS licensees and MSS interests will be able to have more productive discussions regarding the development and refinement of coordination procedures using the specific technical parameters of all the filed systems.

## V. CONCLUSION

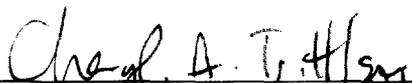
For the foregoing reasons, the Commission should adopt the proposed 2 GHz allocations to MSS. Because of the feasibility of MSS and FS sharing and the advantages of conforming with international trends, FS incumbent relocation and reimbursement rules of the sort used in the PCS spectrum allocations are inappropriate for the MSS bands. Rather, the FCC should adopt a phased transition plan like that set forth in the *Supplemental Comments*, requiring, *inter alia*, that all incumbent licensees in BAS Channel 1 (1990-2008 MHz) vacate the frequencies by January 1, 2000, and that all incumbent licensees in BAS Channel 2 (2008-2025 MHz) and all FS incumbents in the 2165-2200 MHz band transition from those frequencies by January 1, 2005. In addition, the Commission should freeze immediately the licensing of BAS and FS systems in the MSS bands, including modifications to existing operations, unless the nature of the changes is minor.

To facilitate a smooth transition, the FCC should encourage the parties to engage in good faith coordination and resolution of engineering solutions necessary to effectuate the phased transition plan. If necessary, the FCC must be ready to become actively involved in resolving these engineering issues.

Finally, but equally important, the Commission should promptly open a window for the filing of MSS system applications. The acceptance of satellite applications at this time would help facilitate the refinement of sharing methodologies, the development of MSS operational and technical rules, the timely licensing and deployment of MSS systems, and the expeditious introduction of MSS services to the public.

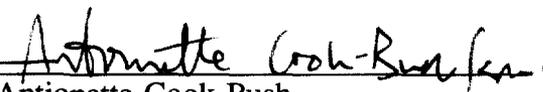
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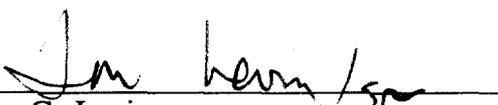
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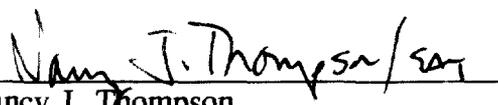
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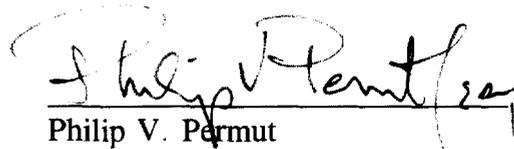
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