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July 8, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

Re: RM No. 8811

Dear Mr. Caton:

On behalf of the Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association ("TIA"), we are filing an original and four (4) copies of its Reply Comments in the above-referenced proceeding.

If there are any questions, do not hesitate to contact the undersigned.

Respectfully submitted,

FLETCHER, HEALD & HILDRETH, P.L.C.

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LRR:cej
Enclosures

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BEFORE THE

Federal Communications Commission

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In the Matter of)
)
Amendment of Parts 2.106 and 25.202 of)
the Commission's Rules to Allocate the)
37.5-38.6 GHz Band to the)
Fixed-Satellite Service and to Establish)
Technical Rules for the 37.5-38.6 GHz Band)

RM No. 881 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

**REPLY COMMENTS OF
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

Pursuant to Section 1.405 of the Commission's rules, 47 C.F.R. § 1.405, the Fixed Point-to-Point Communications Section, Network Equipment Division of the Telecommunications Industry Association ("TIA"),¹ hereby submits its Reply to the pleadings filed in favor of, and in opposition to, the Petition for Rulemaking ("Petition") in the above-captioned proceeding filed by Motorola Satellite Communications, Inc. ("Motorola"). In its Petition, Motorola proposes to (i) allocate the 37.5-38.6 GHz band to the Fixed Satellite Service ("FSS") downlinks; and (ii) adopt, for the 37.5-40.0 GHz band, the limits on power flux density ("PFD") not apply to the band under certain ITU Radio Regulations. TIA in its Opposition to the Petition for Rulemaking ("TIA Opposition"), objected to Motorola's proposal because no justification for the change is presented and because the changes, if adopted, would adversely affect existing point-to-point terrestrial

¹ TIA is the principal industry association representing fixed point-to-point microwave radio manufacturers. TIA members serve, among others, companies, including telephone carriers, utilities, railroads, state and local governments, and cellular carriers, licensed by the Commission to use private and common carrier bands for provision of important and essential telecommunications services.

microwave service (FS) users. As detailed herein, the record supports TIA and compels prompt rejection of Motorola's Petition.

For the reasons set forth below, TIA supports the oppositions of BizTel, Inc. ("BIZTEL"), WinStar Communications, Inc. ("WINSTAR"), Harris Corporation - Farinon Division ("Harris"), Digital Microwave Corporation ("DMC"), Alcatel Network Services, Inc. ("Alcatel") and Pacific Bell Mobile Services ("PBM"). In addition, TIA opposes the one set of comments filed in support of Motorola's Petition, by Lockheed Martin Corporation ("Lockheed"). TIA also opposes BizTel's Motion to Consolidate Motorola's Petition with its rulemaking in ET Docket No. 95-183 and PP Docket No. 93-253, for the reasons set forth below.

MOTOROLA'S PETITION SHOULD BE DENIED

In its Opposition in this proceeding, TIA has demonstrated that Motorola's Petition is both premature and barren of the evidentiary support mandated by the Commission's rules.² Motorola has, instead, elected to present to the Commission a series of self-serving statements, which do not address the critical issue of feasibility, all in a thinly veiled attempt to stake out yet another portion of spectrum for the Fixed Satellite Services ("FSS") industry.³

²See 47 C.F.R. § 1.401(c).

³ Also see TIA Reply Comments dated March 29, 1996 in ET Docket No. 95-183/RM-8553 addressing a Motorola Comment in that proceeding that included a proposal the Commission: (i) allocate the 37.5-38.6 GHz band to Fixed Service Satellite ("FSS") downlinks and (ii) adopt for the 37.5-40.5 GHz band, the limits on pfd that apply to that band under the ITU Radio Regulations, Art 28 § 4(6) RR 2578, 2582, 2583, and 2584. In that proceeding, TIA stated that it "totally disagrees" with the Motorola proposal as well as the use of pfd limits set forth in the aforementioned ITU Radio Regulations because of their preliminary nature.

With one glaring exception, all respondents to Motorola's Petition essentially for the same reasons have roundly criticized Motorola on the same score. As BizTel observes, for example, "the Motorola petition presents no analysis whatsoever indicating that FSS/Fixed Service sharing is feasible in the subject frequency bands," and "preliminary analysis ... indicates that unacceptable interference will occur if Motorola's proposal for shared co-channel FSS and Fixed Service operations is adopted as proposed." BizTel Partial Opposition, p. 3. In a detailed study prepared on its behalf, consultants to WinStar amply have demonstrated that Motorola's proposal to share the 37-40 GHz band with incumbent licensees presents "a number of significant problems",⁴ including but not limited to the fact that WinStar Opposition at pp. 3-4.⁵ Both companies, which are pioneers in the vital, emerging wireless local loop sector of the telecommunications industry, concur that Motorola must provide more detailed information about its proposal, and that Motorola's

⁴See WINSTAR Opposition Section III which states in part:

"... (1) under certain conditions, FSS downlinks would cause harmful interference to FS [Fixed Service] receivers and (2) FS transmitters will cause harmful interference to FSS downlink receivers. More importantly, they observe that attempts to avoid interference will severely limit the potential uses of the spectrum, impose extraordinary costs on licensees, and degrade service quality for end users. In short, sharing between FS licensees and FSS licensees in the 37-40 GHz band will dampen the efficient use of the spectrum to the ultimate detriment of both end users and licensees."

⁵ See also Comments of Pacific Bell Mobile Corporation at pp. 1-2 (allocation sought by Motorola should not be granted unless terrestrial interference standards as defined in TIA Bulletin 10 are adopted), and Opposition of Harris Corporation - Farinon Division at p. 2 (demand for terrestrial fixed services dictates need for adequate spectrum allocations).

Petition should be denied.⁶

In stark contrast to these reasonable concerns, shared by both incumbent licensees and equipment manufacturers, only one party to this proceeding has supported Motorola's petition. In brief Comments, Lockheed echoes Motorola's prayer for relief without offering any substantive evidentiary support. Instead, like Motorola, Lockheed has elected to persuade the Commission, on the basis of bald assertion, that adoption of Motorola's proposal would serve the public interest by providing new domestic FSS allocations required "to satisfy ever-increasing business and consumer demand for satellite services" and "to accommodate the next generation of FSS satellite systems expected to be deployed in only a few years' time." Lockheed Comments, pp. 1, 2. Nowhere in its filing has Lockheed Martin presented a shred of evidence in support of its position, nor any technical data which would address the serious interference concern which TIA and others have raised.

As TIA stated in its Opposition to Motorola's Petition, those arguments fall far short of the Commission's evidentiary requirements in rulemaking proceedings, especially where, as here, petitioners seek to eliminate, or sharply curtail, the rights of incumbent licensees and their end users to their current spectrum allocations. The technical support which Motorola must present to justify its proposal covers a wide range of critical questions which other parties to this proceeding have outlined, but which Motorola (and Lockheed) have ignored completely.

⁶ See WinStar Opposition, p. 12; BizTel Motion to Consolidate.

BIZTEL'S MOTION TO CONSOLIDATE SHOULD BE DENIED

In a separate Motion, BizTel has urged the Commission to consolidate Motorola's Petition with the on-going rulemaking related to the 37.0-38.6 GHz and 38.6-40.0 GHz bands in ET Docket No. 95-183 and PP Docket No. 93-253 (the "37/39 GHz proceeding"). WinStar likewise requests the Commission incorporate Motorola's Petition into the 37/39 GHz proceeding in the interest of administrative convenience. WinStar Opposition, pp. 2-3.

While TIA agrees with BizTel and WinStar that there may be connections between the issues raised in Motorola's Petition and those under review in the 37/39 GHz proceeding, TIA is fearful that the consolidation of the two proceedings will unduly delay the prompt resolution of the latter proceeding, contrary to the public interest. The Commission commenced the 37/39 GHz proceeding in response to a Petition for Rulemaking filed by TIA nearly two years ago, in September 1994. As both BizTel and WinStar have observed in their filings, the enlargement of the on-going rulemaking to include Motorola's Petition would require the submission by Motorola of significantly more detailed and relevant data than it has furnished thus far, with opportunities for interested parties to submit appropriate responses. The prolongation of the current 37/39 GHz proceeding, and the deferral of the important issues it encompasses, to satisfy these administrative law mandates, is contrary to the public interest and should be rejected. The public is entitled to a final resolution of rulemaking proceedings as promptly as possible, without endless postponements caused by intervening potentially related petitions.

Given the blatant deficiencies in Motorola's Petition, which (except for Lockheed Martin) all commenters have recognized, TIA respectfully submits that the appropriate

course of action for the Commission is not to consolidate, nor even to give Motorola an opportunity to amend its Petition to supplement the threadbare showing it has made, but to dismiss Motorola's Petition in its entirety. In the event Motorola is, at some future date, able to present the evidentiary case in support of its proposal which the rules require, it may file a new petition at that time, to which all interested parties may respond. In the meantime, however, neither the Commission nor respondents should be forced to interrupt the 37/39 GHz proceeding, to expend further time or resources on Motorola's filing, or to reward Motorola by keeping its deficient pleading active.

WHEREFORE, The Fixed Point-to-Point Communications Section, Network Equipment Division, of the Telecommunications Industry Association, respectfully urges the Commission to deny Motorola's Petition for Rulemaking in the above-captioned proceeding.

Respectfully submitted,

THE FIXED POINT-TO-POINT
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July 8, 1996

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