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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE SECRETARY

In the Matter of)
)
Reorganization and Revision of Parts 1,)
2, 21, and 94 of the Rules to Establish)
a New Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)
)
Amendment of Part 21 of the)
Commission's Rules for the Domestic)
Public Fixed Radio Services)
)
McCaw Cellular Communications Inc.)
Petition for Rulemaking)

DOCKET FILE COPY ORIGINAL

WT Docket No. 94-148

DOCKET FILE COPY ORIGINAL

CC Docket No. 93-2

RM-7861

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE SECRETARY

TO: The Commission

**REPLY TO OPPOSITION TO PETITION
FOR PARTIAL RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's Rules, CAI Wireless Systems, Inc.

("CAI") hereby replies to the Opposition to Petition for Partial Reconsideration ("Opposition") filed by the Association of American Railroads ("AAR") on August 8, 1996.

In its original Petition, CAI requested reconsideration of the Report and Order^{1/} in this docket to the extent of amending Section 101.603(b)(3) to allow the use of frequency band 10.7 to 11.7 GHz by non-common carriers for the final RF link in the transmission of program material to multipoint distribution systems, cable systems, and master antenna TV systems. In the alternative, CAI supported the elimination of Section 101.603(b)(3) in its entirety.

^{1/} Establishment of a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148 et al., Report and Order, FCC 96-51 (released Feb. 29, 1996) ("Part 101 R&O").

AAR opposed CAI's Petition on the ground that it threatened microwave licensees relocating from the 2 GHz band by decreasing the amount of appropriate spectrum available for their use.^{2/}

AAR's Opposition is misplaced. The 11 GHz band is already being used for "final RF link" video transport. The sole issue here is the nature of entities eligible to hold the license.

The present rules permit a common carrier to use this band for selling full-time service to a video provider, but prohibit the video provider from holding its own license to furnish the same service to itself. The Petition explained, for example, how CAI, constrained for technical reasons to use the 11 GHz band, had to create a separate affiliate as a common carrier, and have that affiliate file a tariff and enter into a service agreement with CAI's customer. Obviously the load on the 11 GHz spectrum is the same regardless of which entity holds the license. The sole intent of CAI's Petition is to eliminate the present need for expensive, inefficient, and inflexible common carrier arrangements, and to implement the Commission's stated policy of abolishing arbitrary asymmetries between common carrier and private operational fixed microwave services.^{3/}

In addition, AAR's Opposition fails to offer any quantitative support whatsoever for its generalized claims that a grant of the Petition would impair the ability of the 11 GHz band to accommodate displaced 2 GHz licensees. The Opposition offers only AAR's own conclusions

^{2/} Opposition at 5.

^{3/} Part 101 R&O at ¶ 5.

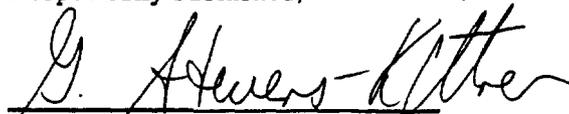
that CAI's proposal would "crowd the band and threaten its viability"⁴ for 2 GHz users. It presents none of the data needed to make the conclusions credible.

Since the limitations on use of the 11 GHz band at issue were adopted without consideration by the Commission when it reallocated the band for private use, and since eliminating those limitations not only furthers the articulated purpose of this proceeding, but will facilitate wireless cable systems' providing competitive services to entrenched traditional cable systems, more is required than AAR's conclusory statements on potential congestion to warrant continuing the current unjustifiable regulatory obstacles to the use of the band.

CONCLUSION

Nothing in AAR's Opposition impairs the grounds set out in CAI's Petition. The Commission should grant the Petition forthwith.

Respectfully submitted,



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August 21, 1996

⁴ Opposition at 5.

CERTIFICATE OF SERVICE

I, Claudine Bostick, Office Manager with the law firm of CAI Wireless Systems, Inc., hereby certify that on this 21st day of August, 1996, a copy of the Reply to Opposition to Petition for Partial Reconsideration was mailed, first class postage prepaid to the following parties:

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