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March 4, 1998

EX PARTE OR LATE FILED

VIA HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: *Ex Parte* Presentation
File Nos. 47-SAT-WAIV-97; 548-SSA-97(50); 1281-DSE-P/L-96 (Call Sign E960327); ITC-95-341; IB Docket No. 96-111/CC Docket No. 93-23, RM-7931; CC Docket No. 87-75; IB Docket No. 95-41

Dear Ms. Salas:

On Tuesday, March 3, 1998, Lon C. Levin, Vice President and Regulatory Counsel for AMSC Subsidiary Corporation ("AMSC") and Bruce D. Jacobs, counsel for AMSC, met with Rebecca Arbogast, Mindy Ginsberg, Joseph Heaps, Regina Keeney, Cassandra Thomas, and Thomas Tycz of the FCC's International Bureau. The presentation is summarized in an earlier *ex parte* letter filed by AMSC on October 24, 1997, a copy of which is attached.

Fourteen copies of this Notice, two for each of the above-captioned proceedings, are being submitted to the Secretary of the FCC in accordance with the Commission's Rules. Please direct any questions regarding this matter to the undersigned.

Very truly yours,

Stephen J. Berman

Stephen J. Berman

cc: Rebecca Arbogast
Mindy Ginsberg
Joseph Heaps
Regina Keeney
Cassandra Thomas
Thomas Tycz
Parties on the attached certificate

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October 23, 1997

RECEIVED
OCT 24 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

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

Re: *Ex Parte* Presentation
File Nos. 47-SAT-WAIV-97; 548-SSA-97(50); 1281-DSE-P/L-96 (Call Sign E960327); ITC-95-341; IB Docket No. 96-111, CC Docket No. 93-23, RM-7931; CC Docket No. 87-75; IB Docket No. 95-41

Dear Mr. Caton:

On behalf of American Mobile Satellite Corporation, Lon Levin, AMSC Vice President, and I met on October 21 with James Ball, Harry Ng, and Michael McCoin of the International Bureau to discuss AMSC's access to spectrum in the MSS L-band. Since that discussion touched on the above-referenced proceedings, we are filing this *ex parte* letter, along with fourteen copies, two for each of the above-captioned proceedings.

AMSC's position is as follows:

The Commission has a long-established policy, reflected in AMSC's license and in several related proceedings, that there is only enough spectrum in the MSS L-band for the Commission to authorize a single MSS system to provide service in the United States.[1] Just last

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[1] Notice of Proposed Rule Making, Docket No. 84-1234, 50 FR 8149, para. 23 (January 28, 1985); Second Report and Order, Docket No. 84-1234, 2 FCC Rcd 485, paras. 4-9 (1987) ("*Second Report and Order*"), *clarified*, 2 FCC Rcd 2417 (1987), *recon. denied*, 4 FCC Rcd 6029 (1989) ("*MSS Recon Order*"), *rev'd and remanded on other grounds sub nom.*, Aeronautical Radio, Inc. v. FCC, 928 F.2d 428 (D.C. Cir. 1991), Tentative Decision on Remand, 6 FCC Rcd 4900 (1991), Final Decision on Remand, 7 FCC Rcd

(continued...)

year, for example, this policy was the basis for the Commission's proposal not to license any additional MSS systems in the MSS L-band until AMSC was assured access to at least 28 MHz in the international frequency coordination process. *Lower L-band NPRM* at para. 9.

While the Commission's spectrum policy in the MSS L-band has been characterized as giving AMSC a "monopoly" in the United States, it is no more of a monopoly than what every RF licensee holds with respect to its spectrum during its license term over the geographic area of its license. Every cellular, broadcast, and domsat licensee holds a similar monopoly. It is standard spectrum management policy for the Commission to award a licensee the exclusive use of its spectrum. Licensees rely on that stability to justify the investment needed to develop their businesses.

AMSC's license does not preclude others from providing MSS in the United States. In deciding that there was only enough spectrum for one MSS system in the band, the Commission mandated that there would be competition in the form of open access to AMSC's space segment. *Second Report and Order* at paras. 34-35; *MSS Recon Order* at para. 34; *Licensing Order* at para. 115. As a result of this mandate, any new or existing service provider can use AMSC's system to offer service in the United States. Because AMSC operates what is essentially a "bent-pipe" system, this open access means that AMSC's space segment can accommodate any such service provider using the provider's mobile terminals. Thus, for instance, Comsat could modify its existing facilities in order to use AMSC's satellite to provide in the U.S. the full range of services that it offers outside the U.S. on Inmarsat satellites. In addition, AMSC faces competition from terrestrial systems and from such existing and planned satellite service providers as Omnitracs, Orbcomm, and the Big LEOs, all of which operate in other bands.

AMSC's license is valid regardless of whether the entity seeking to use the MSS L-band to provide U.S. service is already in operation and has a foreign license or is merely proposing to build a system and seeks a license from the Commission. In either case, the system operator needs authority to provide service in the United States, the grant of which would be directly contrary to the right the FCC gave AMSC to use that spectrum. It is true that AMSC's license is subject to international frequency coordination (as is that of virtually every other Commission RF licensee), but the existence of this condition does not mean that the Commission may itself authorize additional entities to use the same frequencies that the Commission has already

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[1] (...continued)
266 (1992), *aff'd sub nom.*, Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993); Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041, paras. 121, 130-31 (1989) ("*Licensing Order*"), Final Decision on Remand, 7 FCC Rcd 266 (1992), *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993); Report and Order, CC Docket No. 87-75, 4 FCC Rcd 6072, para. 51 (1989); Order on Reconsideration and Further Notice of Proposed Rule Making, CC Docket No. 87-75, 11 FCC Rcd 5330, paras. 18-19 (1996); Memorandum Opinion and Order, File No. ITC-95-422, 11 FCC Rcd 7953, para. 37 (1996); In the Matter of Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, IB Docket No. 96-132, paras. 9-11 (June 18, 1996) ("*Lower L-band NPRM*").

assigned to AMSC.

AMSC's access to its assigned spectrum is already very tenuous because of the congestion of the MSS L-band over North America, where AMSC shares the band with four other MSS system operators -- Inmarsat, Russia's Marafon, Mexico's Solidaridad, and Canada's MSAT. This has made for what is probably the most difficult international frequency coordination process the Commission has ever encountered. If the FCC begins to permit increased operation of other MSS L-band systems in the United States, AMSC will never gain access to the amount of spectrum that the Commission itself found is necessary for a viable business. To date, in the annual coordination negotiations, AMSC has been able to obtain temporary access to only 7 MHz through 1998, at which time spectrum access must be renegotiated.

The four other existing system operators, even with the current policy, have insisted on the right to access far more spectrum than they need for the operation of efficient systems. If the Commission were to permit these systems (and any other new systems) to be used for U.S. domestic service, AMSC would only lose ground in future coordination negotiations, thus jeopardizing not only AMSC's license but also overall U.S. access to L-band spectrum. At the same time, the other operators would be rewarded for their overreaching in coordination, and Comsat and Inmarsat (which have been providing service since 1978) specifically would be rewarded for their refusal to establish or permit the establishment of interoperable facilities so that Inmarsat compatible terminals may operate on AMSC space segment, their opposition to generic allocations, and their continued marketing and use of equipment that uses several times more spectrum than more efficient equipment with the same capability.

A Commission grant of authority to Comsat for its proposed operation of new mobile terminals in the United States using Inmarsat satellites would lead to a significant increase in Inmarsat's spectrum demands. By Comsat's own estimates, the terminals that are the subject of one of the applications could use more than one megahertz of MSS L-band spectrum. Application of Comsat Corporation, File No. 1281-DSE-P/L-96 (Call Sign E960327), at 15-16 (May 24, 1996); AMSC Petition to Deny, at 8 n.15 (July 12, 1996); AMSC Reply, at 7 n.9 (August 23, 1996). Nor can the Commission effectively limit its grant to a small number of terminals. Not only would it be impossible to issue a grant to Comsat and deny one to others seeking to use Inmarsat or other systems, but grant of any of the applications would open the way for widespread marketing, leaving no effective way to limit actual sales and use of such terminals.

In addition, no system other than that of AMSC is capable of meeting fundamental Commission requirements for operation in these bands. These requirements include the provision of priority and preemptive access for aviation safety communications in the upper L-band and maritime safety communications in the lower L-band. To comply with these requirements, AMSC has spent tens of millions of dollars and, with respect to the lower L-band, has had to operate with restrictions on the number of terminals that it may operate. The

Commission may not consider permitting other systems to operate in these bands without coming to terms with the need for parity in any such requirements and restrictions.

Very truly yours,

Bruce D. Jacobs

cc: James Ball
Harry Ng
Michael McCoin
Parties on the attached certificate

CERTIFICATE OF SERVICE

I, Sea Raven, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 24th day of October, 1997, I served a true copy of the foregoing " Letter of AMSC Subsidiary Corporation" by first class United States Mail, postage prepaid, upon the following:

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Sea Raven

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CERTIFICATE OF SERVICE

I, Elinor W. McCormick, a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 4th day of March, 1998, I served a true copy of the foregoing " Letter of AMSC Subsidiary Corporation" by first class United States Mail, postage prepaid, upon the following:

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