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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

May 19, 1998

Via Hand Delivery

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. - Room 222
Washington, D.C. 20554

92-28

Re: **EX PARTE**
ET Docket No. 95-18; RM-7927; PP-28

Dear Ms. Salas:

We write on behalf of the undersigned Mobile Satellite Services ("MSS") Ad Hoc Industry Group ("Industry Group")[1] members to urge the Commission not to auction global MSS spectrum in the 2 GHz frequency bands that have been allocated to these services by International Telecommunication Union ("ITU") World Radio Conferences ("WRC" or "WARC") and by the Commission,[2] as auctioning this spectrum will impede the development of global MSS. Section 3002(c) of the Budget Act requires that the FCC identify additional spectrum to be auctioned to future licensees by September 30, 2002, including 15 MHz from within the 1990-2110 MHz frequency band, which includes spectrum allocated for MSS uplink frequencies ---

[1] The Industry Group consists of applicants in the Commission's 2 GHz MSS initial processing round and several business partners of certain applicants. Participating members of the Industry Group include: The Boeing Company; Celsat America, Inc.; COMSAT Corporation; Constellation Communications, Inc.; Globalstar, L.P.; Hughes Electronics Corporation; ICO Global Communications Services, Inc.; Inmarsat and TRW Inc.

[2] In a March 14, 1997 order, the Commission allocated domestically 1990-2025 MHz for MSS uplink frequencies and 2165-2200 for MSS downlink frequencies. *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, 12 FCC Rcd 7388 (1997) ("2 GHz Order").

specifically, 1990-2025 MHz.[3] As the Commission considers its approach to implementation of the Budget Act, the Industry Group strongly urges the Commission not to propose to auction 15 MHz from the MSS uplink band.

First, the FCC's historical satellite licensing policies demonstrate that Commission and industry efforts have to date resulted in the avoidance of mutual exclusivity. Thus far, the Commission has not had to exercise its auction authority set forth in Section 309(j) of the 1996 Telecommunications Act with respect to global satellite services, relying instead on the adoption of spectrum sharing plans. If, however, the FCC auctions 15 MHz from the MSS uplink allocation, the 2 GHz MSS applicants will have almost 50 percent less uplink spectrum to work with in coordinating their systems, significantly reducing the MSS applicants' ability to develop and agree to a spectrum sharing plan.

Second, auctioning this spectrum would invite harmful international consequences because electro-magnetic emissions to and from communications satellites cannot be restricted to the geographical boundaries of a country. This would further prompt other countries to impose auctions or assess fees for spectrum rights for the supply of spectrum available for satellite services and would require a MSS provider to pay multiple times for the same spectrum frequencies in those countries covered by the satellites' footprints. This cascading effect would chill the development of international satellite services.

The Industry Group supports the findings of the 1996 Satellite Industry Association's ("SIA") study that demonstrated the harmful consequences that would result from satellite spectrum auctions. The study analyzed the disadvantages of satellite spectrum auctions and concluded that such auctions pose unique harmful consequences including: (1) prompting other countries to impose auctions for spectrum rights, creating the potential for extortion and resulting in uncertainty and inefficiency in the satellite industry; (2) causing restricted output by reducing the incentives that require satellite operators to adopt new, more efficient technology and to coordinate their systems with new and existing operators -- "auctions . . . *resolve* demand conflicts, but [do] not *solve* them;" (3) inducing satellite operators to seek to operate under administrations that require less restrictive licensing; (4) disrupting the current cooperative ITU environment for satellite and spectrum coordination; and (5) harming consumers by delaying and denying service.[4] In addition, the SIA study endorsed the

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[3] Balanced Budget Act of 1997, Public Law 105-33, 111 Stat. 251 ("Budget Act"). In identifying spectrum for competitive bidding, the FCC is required, among other things, to "comply with the requirements of international agreements concerning spectrum allocations." § 3002 (c)(2)(D) of the Budget Act.

[4] *See* Letter to Scott Blake Harris, Chief, International Bureau, FCC from Lon Levin, Executive Board Member, Satellite Industry Association (Mar. 21, 1996) (submitting Strategic Policy Research study of satellite spectrum auctions to FCC).

benefits of the Commission's existing policies for avoiding mutual exclusivity among potential satellite licensees, which include the use of strict eligibility requirements, more efficient technical rules and expanded frequency bands.[5]

Third, the Commission noted in its 2 GHz Order that it was in the public interest to allocate a full 70 MHz of spectrum to MSS because it would provide bandwidth to accommodate multiple service providers.[6] In addition, because global MSS systems require international coordination, the FCC concluded that the United States' 2 GHz allocation must be "as consistent as possible" with the WRC-95 and WARC-92 international MSS allocations in order to "help ensure truly universal service."[7] Having found, based on a complete record, that the public interest is served by allocating 70 MHz of spectrum to MSS at 2 GHz, the Commission must not now reduce that allocation.

Finally, it is in the public interest to get MSS to consumers quickly. By resolving the 2 GHz proceeding in an efficient manner and avoiding renewed debate on its spectrum allocation, the Commission can ensure that competitive global MSS will be available to the public sooner. The Industry Group recommends that the Commission instead identify alternative frequency bands for auction[8] that will better serve the public interest, including, if feasible, spectrum bands from outside the 1990-2110 MHz band.[9]

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[5] *Id.*

[6] 2 GHz Order at 7395. The FCC recognized that an estimated 206 MHz of additional MSS spectrum will be needed by the year 2005. *Id.* at 7394-95.

[7] *Id.* at 7395.

[8] Broadcast licensees currently provide analog ENG services in the 1990-2110 MHz frequency band but must vacate the 1990-2025 MHz frequencies to allow for MSS operations. The broadcasters thus would have up to 85 MHz of spectrum to continue operations. Ex Parte of Nucomm, Inc., ET Docket No. 95-18, RM-7927, PP-28 (Feb. 11, 1998); "Digital Video Microwave Systems for STL and ENG Applications & Test Results"; Ex Parte of COMSAT Corp., ET Docket No. 95-18, RM-7927, PP-28 (Mar. 18, 1998); "Digital ENG Tests Using Noisecom Microwave Emulator Performed by COMSAT Laboratories, Clarksburg, Maryland;" Ex Parte of Diana Choi, ET Docket No. 95-18, RM-7927, PP-28 (Apr. 24, 1998); "Digital ENG Equipment Survey Summary."

[9] Section 3002(c)(4)(A)(B) of the Budget Act authorizes the President to select alternative spectrum where allocation of other spectrum serves the public interest and can reasonably be expected to produce comparable receipts.

The Industry Group urges the Commission to retain the full amount of spectrum at 2 GHz awarded to MSS after full notice and comment. The Commission's allocation of 1990 - 2025 MHz to the uplink and 2165 - 2200 MHz to the downlink correctly was found to be, and remains, in the public interest.

Two copies of this letter have been submitted to the Secretary of the Commission for inclusion in the public record, as required by Section 1.1206(b)(1) of the Commission's rules.

Very truly yours,

Jeffrey Frauberman /s/
The Boeing Company

Brian Weimer /s/
Celsat America, Inc.

Richard S. Dodds /s/
COMSAT Corporation

Bruce Kraselsky /s/
Constellation Communications, Inc.

William F. Adler /s/
Globalstar, L.P.

Loretta Dunn /s/
Hughes Electronics Corporation

Francis D.R. Coleman /s/
ICO Global Communications Services, Inc.

Donald M. Kennedy /s/
Inmarsat

Peter Hadinger /s/
TRW Inc.

cc: Chairman William E. Kennard
Commissioner Harold Furchtgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani
Commission Susan Ness
Richard Smith

cc: Bruce Franca
Dale Hatfield
Roy Stewart
Daniel Phythyon
Rosalind Allen
Regina Keeney
Robert Calaff
Tom Tycz