

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Petition for Rulemaking) RM — 9257
To Amend 47 C.F.R. § 101.603 and)
Related Rules — To Allow the use of)
12 GHz OFS Frequencies for the Delivery)
of Video Programming Material)

RECEIVED
JUN 2 - 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CONSOLIDATED REPLY OF OPTEL, INC.

OpTel, Inc. ("OpTel"), hereby submits this consolidated reply to the comments filed regarding OpTel's above-referenced petition for rulemaking (the "Petition").

I. The Commission Should Allow Private Operational Fixed-Service Licensees To Use The 12 GHz Band For The Delivery Of Video Programming Material.

Although the 12 GHz band (12.7 GHz - 13.25 GHz) currently is allocated for use by private operational fixed-service ("POFS"), TV Broadcast Auxiliary, and Cable Antenna Relay Service ("CARS") licensees, POFS licensees are precluded under Section 101.603 from using this band for the delivery of video programming material. In the Petition, OpTel proposed rule changes that would eliminate this restriction.

Specifically, OpTel suggested that Section 101.603(a)(2) should be amended to add the 12 GHz frequency band to those listed in which licensees may deliver any of their own products and services, and Section 101.603(b)(3) should be amended to include the 12 GHz frequency band among those that may be used to provide the final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems, or master antenna TV systems. In addition, because the 12 GHz band currently is available to CARS licensees, corresponding changes should be made to Part 78 of the Commission's rules. In particular, Section 78.18 should be amended to include OFS operation in the band.

No party opposed OpTel's Petition.¹ To the contrary, as ICTA noted, the rulemaking changes suggested in OpTel's petition would help to remove a barrier to

¹ See Comments of the Independent Cable & Telecommunications Association ("ICTA"); Comments of RCN Telecom Services, Inc. ("RCN"); Comments of Alcatel Network Systems, Inc., et al. ("Alcatel").

of the record
CSB

MVPD competition — technical limitations and growing congestion in the 18 GHz POFS band — and level the competitive field by opening a resource in the 12 GHz band that already is available to franchised cable operators.²

Moreover, as RCN explained in its comments, the rule changes proposed by OpTel would help to improve service to end users.³ Allowing POFS licensees to use the 12 GHz CARS band for the delivery of video programming material would enable private cable operators to increase the number of programming channels provided to customers and enable private cable systems to expand beyond urban areas into markets that presently are uneconomical given the limitations of the 18 GHz band. The rule changes proposed by OpTel also would facilitate the provision of bundled telephony, data, Internet, and video services using a single network.

Finally, although its comments support grant of the Petition, Alcatel states in passing that the 18 GHz band is “no longer appropriate” for private cable operations.⁴ OpTel disagrees with this characterization of the problem addressed by the Petition. The 18 GHz band still is appropriate and indeed critical, given the base of established networks using 18 GHz microwave, for private cable operations in many areas, particularly in urban areas other than Denver and Washington, D.C.⁵ To the extent that the Commission seeks to enhance competition outside of these areas, however, additional spectrum in lower frequency bands (*i.e.*, 12 GHz) is required.

II. Alcatel’s Concerns Regarding OpTel’s Request For Waiver Of Section 101.603 Are Beyond The Scope Of This Proceeding And, In Any Event, Inapposite.

Aside from its support for OpTel’s Petition, Alcatel includes in its comments questions and concerns regarding a request for waiver of Section 101.603 filed by OpTel in 1997.⁶ That request involves a different frequency band and different issues from those discussed in the Petition and is, therefore, beyond the scope of this proceeding.

In any event, however, Alcatel’s concerns are misplaced. Under Part 101 of the Commission’s rules, OFS licensees with common carrier authorizations may use the 11 GHz frequencies for the delivery of video programming material. POFS licensees, on

² ICTA Comments at 3.

³ RCN Comments at 4-5.

⁴ Alcatel Comments at 2.

⁵ The Commission no longer will accept new applications in the 17.8–19.7 GHz OFS bands in the Denver and Washington, D.C. areas. See In the Matter of Amendment of the Commission’s Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band, ET Docket No. 97-99, Order (rel. Oct. 14, 1997).

⁶ See Alcatel Comments at 4-5.

the other hand, may not, even though they may use the frequencies for other types of communications. OpTel's earlier waiver request simply seeks to harmonize the Part 101 rules through waiver of an unnecessary distinction between private and common carrier licensees. OpTel is not requesting waiver of any of the underlying service rules applicable to the band.

CONCLUSION

For the reasons set forth above and in OpTel's Petition, the Commission should issue a notice of proposed rulemaking to allow POFS licensees to use the 12 GHz band for the delivery of video programming material.

Respectfully submitted,

OPTEL, INC.



/s/ W. Kenneth Ferree

Henry Goldberg

W. Kenneth Ferree

GOLDBERG, GODLES, WIENER & WRIGHT

1229 Nineteenth Street, NW

Washington, DC 20036

(202) 429-4900

Its Attorneys

Counsel:

Michael E. Katzenstein
Vice-President and General Counsel
OpTel, Inc.
1111 W. Mockingbird Lane
Dallas, TX 75247

June 2, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Consolidation Reply of OpTel, Inc. was sent by first-class mail, postage prepaid, this 2nd day of June, 1998, to each of the following:

William J. Burhop, Executive Director
Independent Cable & Telecommunications
Association
5335 Wisconsin Avenue, NW
Suite 750
Washington, DC 20015

Eliot J. Greenwald
Lawrence A. Walke
Swidler & Berlin, Chartered
3000 K Street, NW
Washington, DC 20007

Robert J. Miller
Gardere & Wynne, LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201

Leonard R. Raish
Fletcher, Heald & Hildreth, PLC
1300 N. 17th Street, 11th Floor
Rosslyn, VA 22209

/s/ Hema Patel
Hema Patel

