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September 21, 1998

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Federal Communications Commission
Office of Secretary

VIA HAND DELIVERY

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

Re: Amendment to Part 27 of the Commission's Rules to
Revise Rules for Services in the 2.3 GHz Band and
to Include Licensing of Services in the 47 GHz
Band, WT Docket No. 98-136.

Dear Ms. Salas:

Enclosed for filing on behalf of WinStar
Communications, Inc. ("WinStar") are an original and four
(4) copies of WinStar's Comments in the above-referenced
proceeding.

Should you have any questions regarding this filing,
please contact the undersigned at (202) 429-4730.

Sincerely,

Sophie J. Keefer

Sophie J. Keefer*

*Admitted in California only.

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BEFORE THE COMMISSION OF FEDERAL

Federal Communications Commission
WASHINGTON, D.C.

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment to Part 27 of the) WT Docket No. 98-136
Commission's Rules to Revise Rules)
For Services in the 2.3 GHz Band)
And to Include Licensing of)
Services in the 47 GHz Band)

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

WinStar Communications, Inc. ("WinStar"), by its attorneys, hereby submits its comments in the above-captioned proceeding.¹ Specifically, WinStar urges the Commission not to impose a spectrum aggregation limit on the spectrum between 30 GHz and 300 GHz ("the millimeter wave band").

I. INTRODUCTION AND SUMMARY.

WinStar provides a wide array of facilities-based voice and data telecommunications services throughout the United States and is a pioneer in offering local exchange service using fixed microwave technology. Using fiber-quality digital capacity in the 38.6-40.0 GHz band ("39 GHz band"), WinStar is building a unique "national local" network to provide consumers with an alternative to the incumbent local exchange carriers ("ILECs"). WinStar currently serves customers in 27 of the largest

¹ Amendment to Part 27 of the Commission's Rules to Revise Rules for Services in the 2.3 GHz Band and to Include Licensing of Services in the 47 GHz Band, WT Docket No. 98-136, Notice of Proposed Rulemaking, FCC 98-142 (rel. July 29, 1998) ("Notice").

metropolitan markets. WinStar expects to reach 30 markets by the end of the year and 40 markets by the end of 1999.

In the Notice, the Commission asks whether "within the entire millimeter wave spectrum, . . . some limit on spectrum aggregation may be useful to foster competition."² WinStar's ability to provide its competitive services could be affected adversely by a spectrum aggregation limit in the millimeter wave band. WinStar believes that imposition of a spectrum cap would hinder wireless carriers such as WinStar in their efforts to compete efficiently with the ILECs and other wireline carriers and would discourage wireless carriers from developing new and innovative technologies for use in the millimeter wave band. Accordingly, WinStar urges the Commission not to adopt a spectrum aggregation limit.³

² See *id.* at ¶ 74.

³ WinStar notes that the Commission has not provided adequate notice of the parameters of its proposal to impose a spectrum aggregation limit; nor has the Commission solicited the necessary information to adopt such a proposal. In considering a similar spectrum cap proposal in the 39 GHz band, for example, the Commission recognized that it is inappropriate to impose a cap without first soliciting comment on whether (1) the band represents a discrete market; (2) the relevant market includes other substitutable spectrum; and (3) the relevant market includes other substitutable technologies, such as fiber optics. See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz, ET Docket No. 95-183, RM 8553, PP Docket No. 93-253, *Notice of Proposed Rule Making and Order*, 11 FCC Rcd. 4930, at ¶ 112 (1995).

II. A SPECTRUM AGGREGATION LIMIT IN THE MILLIMETER WAVE BAND WOULD IMPAIR THE ABILITY OF WIRELESS CARRIERS TO COMPETE WITH INCUMBENT CARRIERS.

The Commission should not impose a spectrum cap in the millimeter wave band because such a limit would not foster the ability of wireless carriers to provide services in competition with ILECs and other incumbents in markets that are not currently competitive, such as local telephony and multichannel video programming. In the 39 GHz licensing proceeding, the Commission declined to adopt a limit on the amount of 39 GHz spectrum that may be aggregated by a single entity or service, recognizing that a spectrum aggregation limit would constrain the ability of wireless carriers to compete with their wireline counterparts.⁴ Such limits would deprive wireless carriers of necessary spectrum essential to their service offerings. In addition, such limits would deny millimeter wave licensees efficiencies of scale, thereby depriving consumers of significant public benefits accruing from lower prices and enhanced service offerings.⁵

⁴ See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz, ET Docket No. 95-183, RM 8553, PP Docket No. 93-253, *Report and Order and Second Notice of Proposed Rule Making*, 12 FCC Rcd. 18600, at ¶ 55 (1997) ("39 GHz Order") ("[A] 39 GHz licensee with substantial spectrum can better compete with established service providers who have large transmission capacity.")

⁵ See id. As noted by the Commission in the 39 GHz Order, "spectrum aggregation would allow a licensee to expand its operation and thereby lower the per unit cost of equipment and its per capita cost of providing service to subscribers." Id.

III. A SPECTRUM AGGREGATION LIMIT IN THE MILLIMETER WAVE BAND WOULD HINDER THE ABILITY OF WIRELESS CARRIERS TO PROVIDE NEW AND INNOVATIVE SERVICES.

The Commission's proposal to impose a spectrum aggregation limit in the millimeter wave band also would discourage wireless carriers from engaging in research and development of technologically-advanced service offerings suitable for this band. In the 39 GHz proceeding, the Commission found that it is not "appropriate to restrict the amount of . . . spectrum that may be licensed to any one service or entity" where "the particular uses of this spectrum are still being defined by the marketplace."⁶ In the millimeter wave band, the Commission already has recognized that users such as WinStar are still in the early stages of development of their services.⁷ The Commission would be ill-advised to adopt a spectrum aggregation limit because in restricting the amount of spectrum that an entity potentially may utilize in deploying new service offerings the Commission inadvertently may frustrate the development of new

⁶ Id. at ¶ 54.

⁷ See Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band, Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations, IB Docket No. 97-95, RM-8811, *Notice of Proposed Rulemaking*, 12 FCC Rcd. 10130, at ¶ 6 (1997) ("Band Plan Notice") ("Since the Millimeter Wave and 39 GHz Notices were adopted, technological developments have sparked new applications for the frequencies between 36-51.4 GHz that were not contemplated in our prior proposals.")

uses for the millimeter wave band.⁸ As in the 39 GHz band, the Commission should rely instead on market forces to maximize consumer welfare and identify spectrum usage needs and efficiencies.

⁸ See Amendment of Parts 2, 15, and 97 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, ET Docket No. 94-124, RM 8308, 12 FCC Rcd. 10571, *Second Report and Order*, at ¶ 48 (1997) ("It has been our experience that opening regions of the spectrum to commercial use stimulates investment and technological development in the spectrum that brings benefits to consumers and the national economy in the form of new communications services, lower costs, and a more competitive industry.")

IV. CONCLUSION.

Based on the foregoing, WinStar respectfully requests that the Commission refrain from imposing a spectrum aggregation limit on the millimeter wave band.

Respectfully submitted,

WINSTAR COMMUNICATIONS, INC.

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Sept. 21, 1998

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CERTIFICATE OF SERVICE

I, Sophie J. Keefer, do hereby certify that on this 21st day of September, 1998, copies of the foregoing "Comments of WinStar Communications, Inc." were delivered by hand to the following parties:

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