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Federal Communications Commission  
WASHINGTON, D.C.

OCT 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE 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 )

REPLY COMMENTS OF WINSTAR COMMUNICATIONS, INC.

WinStar Communications, Inc. ("WinStar"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding.<sup>1</sup>

I. THE COMMISSION'S POLICIES SHOULD PROMOTE FLEXIBLE USE OF THE 47 GHz BAND.

As the Commission stated in its Notice, the implementation of rules for the distribution of licenses in the 47 GHz band should promote flexible use of the spectrum.<sup>2</sup> WinStar believes that the way to achieve such flexibility is through exclusive licensing.<sup>3</sup> By granting auction winners exclusive licenses and by permitting these licensees flexibility over their new spectrum authorizations, the marketplace will be able to guide the

<sup>1</sup> 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").

<sup>2</sup> See Notice at ¶ 9.

<sup>3</sup> By "exclusive" licensing, WinStar means licensing of only one provider within a defined geographic area.

development of services and lead to more efficient use of the spectrum.<sup>4</sup>

In addition, WinStar concurs with Sky Station that 47 GHz licensees should be permitted to partition their service areas and to disaggregate their spectrum.<sup>5</sup> WinStar supports the adoption of a licensing process which will permit licensees to implement a multiple-technology system within their own licensed service areas. Only through a flexible regulatory approach to disaggregation and partitioning will licensees be able to develop multiple-technology systems. Allowing such systems to operate in a single, exclusive service area will allow licensees themselves to decide the best and most efficient way to provide service in response to consumer demand, thereby maximizing consumer welfare and promoting spectrum efficiencies.

For similar reasons, the imposition of angle elevation requirements and emission and power limitations within a licensee's geographic area would be burdensome and restrain market forces. Elevation angles for terrestrial fixed service systems in the 47 GHz band should, like the deployments in the 39 GHz band, reach up to at least 60 degrees. Indeed, WinStar maintains that technical requirements should be limited only to

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<sup>4</sup> See Steven R. Brenner & John R. Woodbury, Competitive Market Considerations in the Licensing of the 37 to 40 GHz Band, Attachment to Comments of WinStar Communications in In Re Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40 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 (filed March 4, 1996).

<sup>5</sup> See Sky Station Comments at 10.

those necessary to minimize harmful cross-border or cross-channel interference between separate licensees' systems. WinStar believes that the implementation of flexible use policies, such as these, will promote efficient use of the spectrum in the 47 GHz band.

**II. RESOLUTION 122 FROM WRC-97 DOES NOT PRESUME THAT SHARING IS FEASIBLE.**

WinStar disagrees with the comments of Lockheed Martin and the Satellite Industry Association that Resolution 122 from WRC-97 presumes that sharing is feasible between FSS, HAPS and FS in the 47 GHz band.<sup>6</sup> Resolution 122 simply requires the ITU-R to "carry out urgently studies" on sharing; it neither establishes nor presumes that sharing is feasible. Indeed, the Resolution resolves "to urge administrations to facilitate coordination between high altitude platform stations . . . and other co-primary services." In this proceeding, the Commission has done just that. The Commission has determined that the best way to facilitate growth in the 47 GHz band is through a form of geographic segmentation whereby one licensee has the exclusive rights to a block of 47 GHz spectrum within its licensed service area. The Commission further facilitates use of the 47 GHz band by allowing each licensee, within its authorized service area, to further segment and offer services using any delivery method permitted in the band. For example, a licensee could, through partitioning, disaggregation, or "self-segmentation", facilitate the operation of both a terrestrial fixed system and a high

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<sup>6</sup> See Lockheed Martin Comments at 5-6; Satellite Industry Association at 2.

altitude platform system within different sub-channels or geographic areas within its licensed service area.

It has been WinStar's experience in the 39 GHz band that sharing of the same spectrum within an area-wide license between fixed services and fixed satellite services is not feasible.<sup>7</sup> In proceedings addressing the 39 GHz band, WinStar has asserted that the threat of satellite interference would compromise the existing services provided by fixed service providers.<sup>8</sup> Here, the harm is slightly different, but just as concerning. If mandatory co-channel sharing within geographic areas is imposed upon licensees in the 47 GHz band, auction winners will lose their flexibility to offer services in the manner they choose. This will not lead to the best, most efficient use of spectrum because the market's role in guiding licensees' technology choices will be limited. Thus, the Commission should not impose sharing requirements upon licensees within their geographic

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<sup>7</sup> See Gene G. Ax & Dale N. Hatfield, Technical Considerations on Sharing Spectrum in the 37-40 GHz Band Between Fixed Satellite Service Downlinks and the Fixed Service, Attachment to Opposition of WinStar Communications, Inc. in In re Requested Amendment of the Commission's Rules to Allocate the 37.5-38.6 GHz Bands to the Fixed-Satellite Service and to Establish Technical Rules for the 37.5-38.6 GHz Band, RM No. 8811 (filed June 20, 1996).

<sup>8</sup> See, e.g., id.

areas. Moreover, the deployment of two co-primary systems in the same licensed service area and within the same band -- when at least one of the systems plans high density uses -- is technically infeasible.

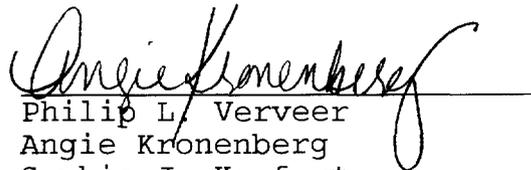
**III. CONCLUSION.**

WinStar urges the Commission to adopt a flexible licensing approach for the 47 GHz band whereby auction winners are provided the exclusive right to determine the nature of services offered within their licensed service areas. Mandated sharing or technical limitations will only prove to stunt the growth of this band. WinStar supports the Commission's efforts to promote flexible use in the 47 GHz band by permitting licensees to choose the technologies that will best serve consumers within their exclusive licensed service areas.

Respectfully submitted,

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October 13, 1998

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CERTIFICATE OF SERVICE

I, Angie Kronenberg, do hereby certify that on this 13th day of October, 1998, copies of the foregoing "Comments of WinStar Communications, Inc." were delivered by hand, unless otherwise indicated, to the following parties:

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