

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

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In the Matter of)
)
Amendment of Parts 2 and 25 of the)
Commission's Rules to Permit Operation)
of NGSO FSS Systems Co-Frequency with)
GSO and Terrestrial Systems in the Ku-)
Band Frequency Range)
and)
Amendment of the Commission's Rules)
to Authorize Subsidiary Terrestrial Use)
of the 12.2-12.7 GHz Band by Direct)
Broadcast Satellite Licensees and Their)
Affiliates)

ET Docket No. 98-206
RM-9147
RM-9245

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF OPTEL, INC.

OpTel, Inc. ("OpTel") submits these comments regarding the above-referenced Notice of Proposed Rulemaking ("NPRM").

BACKGROUND

OpTel distributes facilities-based multichannel video programming through franchised and "private" cable systems serving close to half a million homes in eleven major U.S. cities. OpTel's systems use a microwave network architecture to provide channel capacity that is equal to, or greater than, the channel capacity provided by franchised cable operators. Using its advanced point-to-point microwave networks, OpTel also has begun to offer a variety of telephony services and now is able to provide an integrated package of voice, video, and data services to its customers.¹ Thus, OpTel's systems compete directly with incumbent franchised cable operators and the dominant local exchange carriers such that it now can be regarded as one of the first fully-functioning Integrated Communications Providers ("ICPs").

In the past, OpTel's systems have used primarily 18 GHz (18.142-18.580 GHz) microwave links to deliver the video component of its services. Technical limitations

¹ In two of its major markets (Houston and Dallas-Ft. Worth), OpTel now uses its own central office switch and its own transport network to provide, through subsidiaries and affiliates, facilities-based residential telephone competition to the ILEC. OpTel is in the process of expanding its telecommunications infrastructure in other markets and expects, by the end of calendar year 1999, to offer facilities-based telecommunications in each of its major markets.

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of the 18 GHz band, however, significantly restrict system expansion. Consequently, as OpTel seeks to compete on a broader scale and its systems become more dispersed, OpTel is required either to install relay sites or construct new facilities to serve outlying systems. Naturally, the addition of these facilities raises the total cost of providing service to subscribers and thereby limits OpTel's ability to compete.

Further, as set forth more fully in OpTel's petition, recent changes in the Commission's rules relating to the use of 18 GHz frequencies threaten to impair the continued use of that band by ICPs such as OpTel. Thus, on April 1, 1998, OpTel filed a petition for rulemaking requesting that the Commission amend its rules to allow ICPs to use frequencies in the 12 GHz band (12.7 GHz to 13.25 GHz), which already is open to use by OpTel's franchised cable competitors, for the delivery of video programming materials.

In the NPRM, the Commission recognizes that the proposals outlined therein regarding the use of the 12.75-13.25 GHz band for NGSO gateway uplinks should be considered in light of OpTel's pending petition. See NPRM ¶ 35. OpTel believes that the band can be shared successfully by terrestrial users and NGSO gateway uplink stations and, in any event, OpTel's proposed use of the band will be consistent with the current use of the band by cable antenna relay system ("CARS") licensees. Thus, whatever the Commission concludes with respect to NGSO use of the 12 GHz band, that decision should not delay grant of OpTel's proposed rule changes.

Further, because of the importance of the 12 GHz band for terrestrial uses, and because the primary proponent of NGSO access to the band has assured the Commission that its system will not have a detrimental effect on terrestrial operations, NGSO operations at 12 GHz should be permitted only if they will not impair the development of terrestrial operations at 12 GHz.

DISCUSSION

I. OpTel's Proposed Rule Changes To Allow ICP Use Of The 12 GHz Band Are Extremely Important And Should Be Adopted Without Further Delay.

Most local video distribution markets remain highly concentrated.² Similarly, as the Congress, the FCC, and the general public have recognized, significant facilities-based competition to the incumbent local exchange carriers has not yet developed. ICPs, such as OpTel, offer promise that these local monopolies in telephone and video

² See 1998 Video Competition Report, CS-98-101 (rel. Dec. 23, 1998).

service can be cracked. By opening the 12 GHz band to ICPs for the delivery of video programming material, the Commission would enhance competition in the local markets, promote more efficient use of the radio spectrum and, generally, satisfy its obligation to “encourage the larger and more effective use of radio in the public interest.”³

Nonetheless, OpTel’s petition now has been pending for almost a year. When the Commission put the petition on public notice, no party opposed it. The proposals in the NPRM should not be used as a justification for further delay. CARS licensees already have access to the 12 GHz band for the delivery of video programming material. Only franchised cable operators, however, are eligible to be CARS licensees. As a policy matter, and to the extent that the Commission seeks to encourage competition to the franchised cable operators, federal regulations should not favor one group of competitors over another, particularly not the incumbent monopolists. From a federal regulatory/spectrum management perspective, it makes no difference whatever whether or not an entity using the 12 GHz spectrum has a local government franchise. The Commission should, therefore, move quickly to grant OpTel’s petition and make this spectrum available to cable’s competitors.

II. The Commission’s Action In This Proceeding Should Not Delay Grant Of OpTel’s Petition.

In the NPRM, the Commission has proposed an allocation in the 12 GHz band for NGSO satellite gateway uplinks. The Commission suggests that these uplinks should be able to share the band with incumbent terrestrial operations. NPRM ¶ 33. OpTel generally agrees with that tentative conclusion. Based on the public descriptions of the NGSO services proposed, there is no apparent reason that those services cannot be successfully coordinated with terrestrial operations in the band.

Grant of OpTel’s petition, and an amendment of the rules to permit ICPs to use the 12 GHz band for the delivery of video programming, would not alter that conclusion. As the Commission recognizes in the NPRM, the band currently is used by CARS licensees for the delivery of video programming material. NPRM ¶ 32. The uses proposed by OpTel in its petition are analogous. Thus, to the extent that NGSO systems are able to coordinate with CARS licensees in the band, they also will be able to coordinate with others using the band for video links.

³ 47 U.S.C. § 303(g).

Nonetheless, to the extent that NGSO gateway uplink operations are permitted in the band, the Commission should be very clear that those stations are to be coordinated with terrestrial users and that they must make all reasonable efforts to protect terrestrial users from harmful interference. The primary proponent of NGSO access to the 12 GHz band, SkyBridge, has assured the Commission and other parties that NGSO systems will cause no noticeable degradation to the quality of service or availability of terrestrial links and that "[t]here should be no significant reduction in the ability of existing FS operators to add new links to their systems."⁴ The Commission should hold SkyBridge to its word and protect not only the terrestrial facilities already in place, but the future expansion of terrestrial systems in the band as well.

CONCLUSION

For the reasons set forth above, the Commission should amend the rules regarding the use of the 12 GHz band as proposed by OpTel and permit NGSO gateway uplink operations in the band only to the extent that such sharing can be achieved without impairing the use of the band by terrestrial licensees.

Respectfully submitted,

OPTEL, INC.



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March 2, 1999

⁴ Petition for Rulemaking of SkyBridge, RM-9147 (filed July 3, 1997).