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March 5, 1999

Ms. Magalie Roman Salas
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington DC 20054

Re.: ET Docket No 95-18

Dear Ms. Salas,

Enclosed please find the comments submitted by the Delegation of the European Commission on behalf of the European Community to the US Department of State in the above-referenced proceeding. The Delegation requests that these comments be part of the proceedings in this matter and put in the public record.

Sincerely,

Bernd Langeheine
Trade Counselor

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FEDERAL COMMUNICATIONS COMMISSION
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REPLY COMMENTS BY THE EUROPEAN COMMUNITY TO THE THIRD NPRM IN THE MATTER OF AMENDMENT
OF SECTION 2.106 OF THE COMMISSION'S RULES TO ALLOCATE SPECTRUM AT 2 GHz FOR USE BY THE
MOBILE-SATELLITE SERVICE

1. The Delegation of the European Commission presents its compliments to the Department of State and has the honour to refer to the third Notice of Proposed Rule-making adopted by the Federal Communications Commission (FCC) on November 19, 1998 in the matter of Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service (ET Docket 95-18).

2. The European Community (EC) welcomes the opportunity offered by the FCC Notice to comment on a subject with such important implications in terms of the objective of achieving a truly competitive environment, which objective is shared both by the EC and the US. Access to spectrum is being increasingly recognised as a key factor for market access, and timely and effective spectrum management policies are therefore essential to achieve that common objective.

3. The EC considers that the issue of the spectrum access process should be seen in conjunction with the process of granting licences¹. The ultimate goal should be creating the necessary conditions for open, timely and non-discriminatory licensing. This would ensure that consumers are provided with diversity of choice, reduced prices and increased quality of service.

4. This has been the rationale adopted in Europe, where a number of Decisions² have been adopted in the EC and the CEPT³ contexts, in close consultation with industry (European and non-European), paving the way for the timely, transparent and non-discriminatory introduction of Mobile-Satellite Service (MSS) systems throughout the European continent, irrespective of their national origin. In particular, arrangements for migration of existing systems were laid down to satisfy the

¹ Constellation Communications also called for a joint treatment of spectrum issues ("relocation") and licensing (page 2).

² EC Decision No 710/97/EC of the European Parliament and of the Council of 24 March 1997 on a coordinated authorization approach in the field of satellite personal-communication services in the Community

ERC Decision (97)03: "on the Harmonised Use of Spectrum for Satellite Personal Communication Services (S-PCS) operating within the bands 1610-1626.5 MHz, 2483.5-2500 MHz, 1980-2010 MHz and 2170-2200 MHz"

ERC Decision (97)04 "on transitional arrangements for the Fixed Service and the Mobile-Satellite Service in the bands 1980-2010 MHz and 2170-2200 MHz in order to facilitate the harmonised introduction and development of Satellite Personal Communications Services

ERC Decision (97)05 "on free circulation, use and licensing of Mobile Earth Stations of Satellite Personal Communications Services (S-PCS) operating within the bands 1610-1626.5 MHz, 2483.5-2500 MHz, 1980-2010 MHz and 2170-2200 MHz within the CEPT

ECTRA Decision (97)02 "On harmonisation of authorisation conditions and co-ordination of procedures in the field of Satellite Personal Communications Services (S-PCS) in Europe, operating within the bands 1610-1626.5 MHz, 2483.5-2500 MHz, 1980-2010 MHz and 2170-2200 MHz

³ Conférence Européenne des Postes et Télécommunications, i.e. European Conference of Posts and Telecommunications.

frequency needs of the MSS applicants, without imposing any significant burden on these applicants (i.e. European and non-European).

5. It can thus be concluded that the potential of MSS in terms of increasing competition and consumer satisfaction has been fully recognised in Europe. The EC expects that the FCC also follows that approach, thus creating the necessary conditions for further competition of MSS systems in the US market. In particular, those MSS systems which are ready to enter the US market earlier than others should not be prevented from doing so by being unnecessarily delayed or significantly burdened. This will stimulate competition, is in the public interest and is for the benefit of US consumers.

6. In this context, the EC has strong concerns about the tendency of some commenters to this NPRM to group together all applicants seeking authorisation to offer MSS in the US in the 2 GHz band, thereby failing to recognise that some of these systems are in a more advanced stage of development than others. In particular, ICO Global Communications ("ICO") is expected to launch commercial service in 2000, well ahead of most of the other applicants in that particular frequency band. The EC considers that any spectrum management and licensing policies adopted by the FCC should take these different levels of development into account.

7. This argument also applies to the FCC statement in paragraph 15 of the NPRM that "We also find that our actions do not discriminate against non-US licensed systems. Our policy with regard to MSS systems operating in the spectrum at issue in this proceeding applies equally to all licensees, whether foreign or domestic. We recognise that some MSS systems may operate in other frequency bands where no relocation compensation has been required ...". The EC notes that this interpretation disregards the necessity to ensure, as far as possible, a level playing field among all first generation MSS systems operating or planning to operate in the US in the spectrum at issue in this proceeding (2 GHz) or in other bands (at 1.6/2.4 GHz or 1.5/1.6 GHz). Instead, it puts non-US applicants for first generation systems, such as ICO, on a par with US-based applicants for second generation MSS systems which have already received licenses for their first generation systems in the US as well as in Europe without the imposition of any significant burden (including the payment of relocation costs). This situation creates a competitive disadvantage for those applicants for first generation systems still looking for a licence in the US, as they are more likely to have difficulties in planning their operations and attracting financial investment because they do not have yet regulatory certainty at this stage regarding the conditions for entering the US market.

8. Another important concern for the EC is the impact that the approach taken by the FCC can have on the licensing of MSS and other global satellite services in other countries⁴. We are particularly concerned about the negative precedent that the approach taken by the Order to impose costs for the relocation of incumbent services could set for the licensing of Mobile Satellite Services (MSS) and other global satellite services in other countries. We share your aim of achieving an early and effective establishment of MSS systems at a global level, and therefore we are against barriers raised by any country which may undermine the quality and inflate the price of these global services, or which could even threaten their economic viability. The EC notes the separate statement of Commissioner Susan Ness in this regard: "I would encourage the Commission generally to consider the effect that our spectrum management policies have on international satellite systems seeking to

⁴ As already expressed by the EC on previous occasions, including in the letter of Mr. Verrue to Mr. Kennard of 12.11.98 (which is in the public record).

be licensed and begin offering services globally as one of a host of issues that we will explore in the upcoming spectrum management *en banc*. However, the EC is concerned that such a statement implies a tacit recognition that the FCC has not yet given proper consideration to the impact that the FCC spectrum management policies have at international level. This would reinforce our previous concerns.

9. The EC suggests that the best way for the FCC to be sure that its spectrum management policies will have a positive impact globally is to adopt, in a timely manner, transparent and non-discriminatory licensing procedures which do not impose unnecessary burdens on new MSS entrants, as has been done in Europe. The EC hopes that, as happened in Europe, the FCC provides due attention to the constructive proposals received from industry, such as the proposal for an integrated licensing-transitioning solution for MSS entrants and terrestrial wireless incumbents that was submitted by ICO on February 16, 1999, and which is aimed at permitting timely access to the 2 GHz bands while minimising adverse impacts on all interested parties.

10. The EC would like to reaffirm that it will remain attentive to the treatment given to European-based satellite systems in the US. The EC will be particularly attentive to any behaviour which is contrary to the spirit or letter of the commitments undertaken by the US within the WTO agreement on basic telecommunications services.

11. The Delegation of the European Commission would be grateful for the views of the Department of State, and requests that this *Note Verbale* be transmitted to the FCC so that it can be part of the proceedings in this matter and put in the public record.

12. The Delegation of the European Commission avails itself of the opportunity to renew to the Department of State the assurance of its highest consideration.

