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March 25, 1999

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Satellite and Radiocommunication Division  
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International Bureau  
2000 M Street, NW, Rm. 811  
Washington, DC 20554

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MAR 25 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: *Ex Parte* Presentation  
File Nos. 47-SAT-WAIV-97; 548-SSA-97(50); 1281-DSE-P/L-96  
(Call Sign E960327); ITC-95-341; IB Docket No. 96-111, CC Docket  
No. 93-23, RM-7931; CC Docket No. 87-75; IB Docket No. 95-41; 730-  
DSE-P/L-98; 647-DSE-P/L-98; 1217-SSA-98

Dear Tom:

In connection with the above-referenced applications, AMSC Subsidiary Corp. ("AMSC") submits the following in support of its position that the Bureau does not have authority to act on the TMI and SatCom applications, except to deny them pursuant to established Commission rules and policy: (i) the Commission has codified in its rules the decision that there is only enough spectrum for the Commission to license a single MSS system in the L-band and (ii) the federal government has put limits on the number of mobile terminals that may be operated in this band in order to protect its use for high-priority safety services. A grant of these applications would reduce access to spectrum by AMSC, the existing licensee, as well as reduce the number of terminals that may be permitted to operate on AMSC's system. Over the years, the Commission repeatedly has made it clear that there is a shortage of spectrum in the MSS L-band and that there needs to be special restrictions on the use of the spectrum. Nothing has occurred that changes the basis for these decisions, which must be respected by the Bureau in its processing of the above-referenced applications.

*Section 25.114(c)(19)*. In our previous filings we have noted that any grant of the above-referenced applications would be inconsistent with the Commission's prior decisions that there is only sufficient spectrum in the L-band for it to license a single MSS system. In addition to the cites provided in those filings to the Commission's MSS spectrum allocation and licensing orders, the Commission should be aware that this decision is also codified in Part 25 of the Commission's rules. Section 25.114(c)(19) provides that "[a]pplications for authorizations in the Mobile-Satellite Service in the 1545-1559/1646.5-1660.5 MHz frequency bands shall also provide all information necessary to comply with the policies and procedures set forth in Rules

Thomas S. Tycz  
March 25, 1999  
Page 2

and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service, 2 FCC Rcd 485 (1987).”

The order referred to in the rules is the one in which the Commission established the licensing procedures for MSS systems in the L-band. In that order, the Commission found that “authorizing multiple MSS systems to share the same spectrum is not a feasible licensing alternative at least for the first generation” (para. 5), and that “the spectrum allocation for MSS [including the division of the spectrum into co-primary and secondary allocations] makes it impractical to license more than one system” (para. 7). Therefore, the Commission concluded, “we will license only one MSS system to use the entire allocated bandwidth,” (para. 9) in the form a “consortium comprised of all qualified and willing pending applicants” (para. 10).

The Commission in *DISCO II* explicitly extended this rule to the licensing of earth stations operating with non-U.S. licensed satellites. Report and Order, Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Service in the United States, 12 FCC Rcd 24094, para. 190 (1997). The Commission has decided that there is only enough spectrum for it to license a single system in the band; it is irrelevant whether the Commission is licensing the space station of that system or its earth stations.

In its 1996 streamlining of the satellite rules, the Commission eliminated some of the requirements of Section 25.114(c), but not Section 25.114(c)(19). Report and Order, Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures, 11 FCC Rcd 21581 (1996). The only time this section was modified was in connection with the Big LEO rulemaking, at which point the language was changed to clarify that it applied to the frequencies to which AMSC was licensed. Report and Order, Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936 (1994).

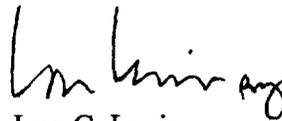
The existence of Section 25.114(c)(9) further demonstrates that the International Bureau lacks the authority to grant the above-referenced applications; a Bureau grant of these applications would not only result in a dramatic reversal of an established Commission policy, it would effectively overturn a rule enacted by the full Commission in 1991. *See* First Report and Order, Amendment of Part 25 of the Commission’s Rules and Regulations to Revise Application Processing Procedures for Satellite Communications Services, 6 FCC Rcd 2806 (1991). Under its delegated authority, the Bureau can only dismiss these applications.

*Mobile Terminal Limits.* The spectrum at issue in these applications is allocated on the basis of its being shared by government and non-government users. Section 2.106. Because of concerns expressed by National Telecommunications and Information Administration, the

Thomas S. Tycz  
March 25, 1999  
Page 3

Federal Aviation Administration, and the U.S. Coast Guard, AMSC is subject to limits on the total number of mobile terminals that it may operate. *See Memorandum of Understanding Between the NTIA, FCC, and the FAA (November 18, 1994); AMSC Subsidiary Corp., 11 FCC Rcd 5527 (Int'l Bur., 1995).* If the Commission grants the above-referenced applications, it must consider the impact of those grants on these limitations, including the possibility that the federal agencies involved may not be willing to permit these limits to be lifted to accommodate any new licensees or may condition such accommodation on AMSC not being able to increase the number of terminals that it operates. This highlights the fact that the licensing of additional systems to operate in the MSS L-band requires coordination with various federal agencies and is a zero-sum proposition: the grant of any of the above-referenced applications will reduce AMSC's ability to operate and to develop its own system.

Very truly yours,



Lon C. Levin

cc: Office of the Secretary  
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Joseph Hersey, Coast Guard  
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