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

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APR 14 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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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REPLY COMMENTS OF OPTEL, INC.

OpTel, Inc. ("OpTel") submits this reply to the comments filed regarding the above-referenced Notice of Proposed Rulemaking ("NPRM").

DISCUSSION

I. No Party Opposed OpTel's Petition.

In the NPRM, the Commission requested comment regarding the impact that grant of OpTel's petition to open the 12 GHz CARS bands to cable competitors would have on the proposals in the NPRM to use the 12.75-13.25 GHz band for gateway uplinks. See NPRM ¶ 35.

No party opposed OpTel's petition. See, e.g., SkyBridge Comments at 75-76. Although Boeing notes that it "would like the opportunity ... to participate in the drafting of any rules that may be proposed in order to facilitate coordination between gateway earth stations and any new fixed services that are permitted to operate in the band," Boeing Comments at 34, the concern underlying that desire is premised on a fundamental misunderstanding of the nature of OpTel's petition. In essence, OpTel simply is asking that the Commission eliminate an anachronistic eligibility restriction for CARS band licenses so that new entrants into the video programming distribution markets may access the same spectrum that the franchised cable monopolists have for

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the transport of video programming materials. The new entrants will, naturally, use the band subject to the same rules and regulations, including coordination requirements, that the franchised cable operators do.

Given the lack of opposition to OpTel's petition, both in this proceeding and when the petition was put on public notice in 1998, the Commission should hesitate no longer to issue the notice of proposed rulemaking and move forward with OpTel's important pro-competitive initiative. In an era in which the Commission is trying to promote competitive entry into the local video programming distribution markets, eligibility restrictions on the use of CARS band frequencies that date from the days when franchised cable was the only game in town simply have no place.

II. The Commission's Rules Should Preserve Established Services And Promote Equitable Band Sharing.

A. 10.7-11.7 GHz

In the NPRM, the Commission sensibly proposed to adopt 100 kilometer "exclusion zones" around the fifty largest U.S. cities in which no NGSO gateway earth stations would be permitted. NPRM ¶ 23. Many of the parties commenting on this point supported the Commission's proposal.

Some, however, believe that the proposed exclusion zones are too small. See SBC Comments at 5 (exclusion zones should be increased to 200 kilometers); see also Comments of the Fixed Wireless Communications Coalition ("FWCC") at 7 & n.21 (suggesting that an exclusion zone of at least 400 kilometers would be appropriate). OpTel agrees. A slight expansion of the proposed exclusion zone, while minimally burdensome for gateway earth station operators, would significantly reduce coordination concerns.

For largely the same reasons, OpTel agrees with the FWCC that the Commission should not adopt a sunset date for the exclusion zones. See FWCC Comments at 8. The exclusion zones are intended to permit and promote the normal growth of terrestrial services that use the 10.7-11.7 GHz band. There is no reason to make a judgment at this time whether the need for the exclusion zones will in any way have diminished five years from now. If at some time in the future the Commission has reason to believe that the exclusion zones no longer serve the public interest, it should then propose their elimination and allow the public to comment on that proposal.

OpTel also supports the suggestion of the FWCC that the Commission should adopt shielding, siting, and antenna size restrictions for earth stations operating at 10.7-11.7 GHz. See FWCC Comments at 9-10. Whatever burdens such restrictions might entail, they are more than outweighed by the benefits they would provide in enhanced band sharing by terrestrial and space-based services.

Perhaps most importantly, OpTel agrees with FWCC that the Commission should establish a cap on the number of NGSO gateway stations that may be deployed at 11 GHz. See FWCC Comments at 6. The Commission's proposal for these bands was, appropriately, that they be used by NGSO systems for gateway operations, which "are not intended to originate [or] terminate traffic but are primarily intended for interconnecting to other networks." NPRM ¶ 15. These bands were not intended to be available for general earth station use, and certainly not for point-of-service use. A cap on the number of stations authorized is consistent with that purpose.

On that basis, OpTel opposes the suggestion of PanAmSat that the Commission adopt an *ad hoc* approach to the definition of "gateway operations," PanAmSat Comments at 20, which may be authorized to use the 10.7-11.7 GHz band. See also Teledesic Comments at 6. If adopted, that suggestion could expand the notion of "gateways" to include facilities located at end-user premises (including video production facilities, corporate offices, or Internet access points), any or all of which are likely to be located in urban areas.

Indeed, in a footnote, PanAmSat suggests that the Commission should permit GSO FSS earth stations within an exclusion zone where the applicant can demonstrate "a need" and the site is coordinated. See PanAmSat Comments at 21 n.41. Such a rule, however, would allow the proverbial nose of the camel under the tent. Naturally, it will be no great matter to demonstrate "need" — one would assume that earth station facilities are not constructed when they are unnecessary — and a coordination requirement misses the point — it is not that earth stations cannot be coordinated in an exclusion zone, but that the growth of terrestrial systems in urban areas should not be constrained by earth station deployment. In apparent recognition of this point, PanAmSat cautions that earth station applicants seeking to locate within an exclusion zone should be required to demonstrate that "the earth station's existence will not unreasonably constrain future FS use of the 10.7-11.7 GHz band." Id. Such a demonstration necessarily would be hollow, however, for no one can know where terrestrial paths will be needed in the future.

B. 12.75-13.25 GHz

OpTel opposes the suggestion by GE Americom that the Commission eliminate the "international only" restriction on GSO FSS use of the 12.75-13.25 GHz band. GE Americom Comments at 25. GE Americom offers no sound basis for the elimination of this restriction and, instead, merely asserts that the ITU's more liberal allocation "makes sense." Id. To the contrary, there are good reasons to maintain the international only restriction in the U.S. See FWCC Comments at 7. The principle guiding the Commission in this proceeding should be to develop rules and policies that will promote band sharing and protect established uses of the bands in question. Reasonable limitations on the number and type of stations using the 12.75-13.25 GHz band are consistent with that principle.

Respectfully submitted,

OPTEL, INC.


/s/ Michael E. Katzenstein
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April 14, 1999

CERTIFICATE OF SERVICE

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A handwritten signature in black ink, appearing to read "Susan Jamieson", written over a horizontal line.