

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

In the Matter of

**Establishing Rules and Policies For the Use of
Spectrum for Mobile Satellite Service in the
Upper and Lower L-Band**

To: The Commission

IB Docket No. 96-132

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO REFRESH THE RECORD

Michael D. Kennedy
Corporate Vice President and Director
Global Spectrum and
Telecommunications Policy
Barry Lambergman
Manager, Satellite Regulatory Affairs
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005
(202) 371-6900

Philip L. Malet
Maury D. Shenk
Matthew S. Yeo
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036
(202) 429-3000

Counsel for Motorola, Inc.

Patricia A. Mahoney
Assistant General Counsel
Regulatory and Trade Policy
Audrey Allison
Counsel, Regulatory and Trade Policy
Iridium LLC
1575 Eye Street, N.W.
Washington, D.C. 20005
(202) 408-3800

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Motorola, Inc. (“Motorola”) and Iridium LLC (“Iridium”), pursuant to 47 C.F.R. § 1.41, respectfully request the Commission to refresh the record in this proceeding by seeking additional public comment on the matters at issue in the L-Band NPRM.¹

I. Introduction and Summary

Conditions in the satellite market, and in particular conditions affecting mobile satellite service (“MSS”) in the L-band,² have changed radically in the two and one-half years

¹ Establishing Rules and Policies For the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-Band, 11 FCC Rcd. 11675 (1996) (“L-Band NPRM”). Motorola (through its wholly-owned subsidiary Motorola Satellite Communications, Inc.) and Iridium are participants of record in this proceeding. See Comments and Opposition of Motorola Satellite Communications, Inc. and Iridium LLC, IB Docket No. 96-132 (Sept. 3, 1996) (“Motorola/Iridium Comments”); Reply Comments of Motorola Satellite Communications, Inc. and Iridium LLC, IB Docket No. 96-132 (Oct. 7, 1996) (“Motorola/Iridium Reply Comments”).

² The L-band includes the “upper L-band” – the 1545-1559 MHz and 1646.5-1660.5 MHz bands – and the “lower L-band” – the 1525-1544 MHz and 1626.5-1645.5 MHz bands. See id. at 11676.

since the last round of comments on the L-Band NPRM. Of particular significance, Inmarsat, the entity that has access globally to the greatest amount of L-band spectrum, has announced that as of today it makes a transition from an intergovernmental organization to a private company.

Other changes affecting the L-band since the close of the pleading cycle on the L-Band NPRM include:

- commencement of commercial operations of the first truly global MSS system, the Iridium system, which operates in 5.15 MHz of L-band spectrum adjacent to frequencies at issue in this proceeding;
- the entry and imminent entry into service of other new MSS providers that may operate globally or regionally, using geostationary or non-geostationary satellites;
- the availability of global and regional MSS spectrum in the 2 GHz band;
- the fact that the American Mobile Satellite Corporation (“AMSC”) system has shown limited subscriber growth, notwithstanding its long period of exclusive access to L-band spectrum for U.S. service; and
- the conclusion of the World Trade Organization Agreement on Basic Telecommunications Services (the “WTO Telecom Agreement”) and the associated increase in requests by non-U.S. companies for access to U.S. spectrum.

As demonstrated below, these important developments have altered nearly all of the premises accepted in 1996 by the Commission and the commenters in this rulemaking proceeding. The record of this proceeding is now stale. Given the scarcity of global MSS spectrum and growing demands for its use, the Commission should not act in this proceeding without first providing an opportunity for additional public comments, as it has done under similar circumstances in numerous other proceedings. Furthermore, pending completion of this proceeding and initiation of a lower L-band processing round, the Commission must not grant any applications seeking use of the lower L-band, for which there is a Commission “freeze” in

place. If the Commission grants any such applications, it should accommodate them only in the upper L-band.

II. Conditions Have Changed Radically Since the Commission Issued the L-Band NPRM in 1996

In the L-Band NPRM, the Commission proposed the following spectrum policy for the L-band:

Under our proposed rules, we will not now accept applications for spectrum coordinated in the lower L-band. Instead, we propose on our own motion, to limit use of the L-band in an amount up to the first 28 MHz of spectrum coordinated, to the existing L-band MSS licensee [AMSC]

L-Band NPRM, 11 FCC Rcd. at 11683. The Commission identified four primary reasons for this proposed policy:

- “[I]t is unlikely that we could coordinate more than 10 MHz in the lower L-band for another U.S. system, and we have previously estimated that 20 MHz is the minimum amount of spectrum necessary for a viable MSS system.” Id. at 11680.
- There are “public interest reasons to support MSS in the L-band [involving the various benefits of MSS]. . . . [T]he L-band is currently the only primary MSS band in which we have licensed geostationary MSS systems. Geostationary and nongeostationary MSS systems each have distinctive service characteristics, and we believe that each type of service should be allowed to demonstrate its advantages. If geostationary MSS is to have that opportunity in the near term, it must be in the L-band.” Id. at 11680-81.
- “AMSC . . . is in the best position to provide MSS to the public expeditiously. If AMSC . . . obtains insufficient spectrum for its system, its service will be jeopardized, and no other potential licensee in the lower L-band will be able to provide service for years.” Id. at 11681.
- “[T]he public interest requires that a Commission license carry with it some reasonable expectation that it will permit the holder to implement its system. . . . The Commission naturally does not guarantee that other administrations will always accommodate U.S.-licensed systems. We can and should, however, take reasonable and appropriate steps to ensure that our licensees [i.e., AMSC] have a fair opportunity to compete.” Id.

The circumstances underlying each of these rationales have changed dramatically since the Commission issued the L-Band NPRM.

First, the Commission itself no longer believes that “20 MHz is the minimum amount of spectrum necessary for a viable MSS system.” For example, in its recent 2 GHz NPRM, the Commission stated that it “believe[s] that the 2 GHz MSS allocation [of a total of 70 MHz] can accommodate reasonably all nine of the proposed systems . . . , while leaving open the possibility of future entry in the 2 GHz MSS bands.”³ Specifically, the Commission proposed to allocate 5 MHz or less of spectrum to each applicant for its initial operations in the 2 GHz band.⁴ It should be noted that the Iridium system has initiated its service using frequency-reuse, modulation, and compression technologies to provide high-quality service with 5.15 MHz of global spectrum.⁵ The Commission should ensure that its L-band policies recognize and promote such spectrum efficiency, particularly where increased efficiency yields increased competition.

Similarly, the Commission’s views on the difficulty of coordinating more than 10 MHz for a new system in the lower L-band must also be reassessed, in view of this increased spectrum efficiency and in view of the privatization of Inmarsat. Inmarsat has announced that as of today – April 15, 1999 – it will make a transition from an intergovernmental organization to a private United Kingdom company. Because Inmarsat is by far the largest user of L-band

³ Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, 1999 FCC LEXIS 1217, at ¶ 24 (rel. Mar. 25, 1999) (“2 GHz NPRM”).

⁴ See id. at ¶¶ 34-36 (proposing to allocate initially 5 MHz for each TDMA system and 25 MHz to be shared by up to seven CDMA systems with a possibility for future expansion to meet future demand).

⁵ Iridium will need additional spectrum to meet its commercial needs as its business expands.

spectrum,⁶ its privatization dramatically changes the spectrum coordination picture in the L-band.⁷ If Inmarsat is to be a truly private company, it is essential that the Commission reexamine its policies and strategies in international coordination activities. These policies have allowed Inmarsat, as an intergovernmental organization, to control a dominant share of the scarce and valuable MSS spectrum in the L-band; and these policies should not continue if Inmarsat is to be a private company that is required to compete on an equal basis in the MSS marketplace.

Second, the Commission no longer maintains that the L-band is the only band available for geostationary MSS. In the 2 GHz licensing proceeding, four of the nine applicants are proposing to offer geostationary MSS, and the Commission has tentatively concluded that it can license all of these systems in the 2 GHz band.⁸ Moreover, the L-band is one of the few bands available globally for provision of MSS, and the Commission has recognized the value of such spectrum to global MSS systems.⁹ The Commission should not limit its options for use of scarce global MSS spectrum resources by reserving the L-band for regional geostationary

⁶ Motorola and Iridium estimate that Inmarsat occupies nearly 30 MHz out of the 66 MHz of L-band spectrum in ITU Region 2 and nearly 40 MHz of that spectrum in ITU Regions 1 and 3.

⁷ The Commission recognized the importance of this issue in the L-Band NPRM, when it requested comment on “the presence of Inmarsat and three other geostationary MSS systems in the lower L-band and the likelihood that geostationary satellites will continue to occupy this portion of the spectrum for the foreseeable future.” L-Band NPRM, 11 FCC Rcd. at 11680. At the time of the comments on the L-Band NPRM, however, Inmarsat privatization was no more than a remote possibility.

⁸ See 2 GHz NPRM, at ¶ 24, App. A.

⁹ See id. at ¶ 28 (“[P]ortions of the 2 GHz MSS spectrum allocation are not uniformly available throughout the world [D]ue to their global service coverage and discrete channel plans, NGSO systems may benefit most from a global spectrum assignment.”).

service, when proper and efficient spectrum management can provide for both regional geostationary and global non-geostationary systems in this band.

Third, the Commission should recognize that it is no longer true that “AMSC ... is in the best position to provide MSS to the public expeditiously” or that “no other potential licensee in the lower L-band will be able to provide service for years.” Numerous competitive alternatives are now available, or very soon will be. Iridium has been providing service since late last year. Globalstar plans to enter service within the next few months, and foreign competitors like ICO Global, TMI and Inmarsat are also seeking to provide U.S. service. The emergence of foreign competition is a particularly significant change since the L-Band NPRM, because the United States has committed under the WTO Telecom Agreement (which was concluded in February 1997) to provide equal market access to foreign service providers.

By refusing to accept applications for use of the L-band from U.S. operators other than AMSC, as proposed in the L-Band NPRM, the Commission places domestic operators at a significant disadvantage in meeting International Telecommunication Union advance publication requirements, compared to foreign competitors who do not face similar constraints. As the Commission correctly recognized in the L-Band NPRM:

[E]ffective international coordination is not possible without the active assistance of a U.S. licensee. We are in a better position to explain the U.S. claim of need to other countries if we base that claim on a real system backed by actual business plans.¹⁰

¹⁰ L-Band NPRM, 11 FCC Rcd. at 11679.

Fourth, while AMSC launched its satellite only about a year before the L-Band NPRM, it has now been in operation for nearly four years.¹¹ AMSC has had more than a “fair opportunity to compete.” In fact, it has had exclusive U.S. access to valuable L-band spectrum for more than one-third of the full duration of its license.¹² During that time, AMSC has failed to meet milestones and other requirements mandated by the Commission.¹³ As the Commission has repeatedly stated, its “rules should promote competition, not protect certain competitors.”¹⁴ It is time for the Commission to recognize that the interests of promoting competition, efficient use of spectrum, and diversity of service options in the L-band far outweigh any perceived need to protect AMSC from competition.

III. Changed Circumstances and Precedent Require the Commission To Seek Further Comments in This Proceeding

In rulemaking proceedings such as this one, the Commission routinely takes steps to update the record when changed market conditions, advances in technology, the passage of time, or legal developments have rendered the prior record incomplete or outdated. For example,

¹¹ See AMSC SEC Form 10-K for Fiscal Year Ended Dec. 31, 1998, at 15 (Mar. 30, 1999) (“AMSC 10-K”) (“The ten-year term of [AMSC-1] began August 21, 1995.”).

¹² See id.; Amendment of Parts 2, 22 and 25 of the Commission’s Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, 4 FCC Rcd. 6041, 6060 (1989) (“AMSC Licensing Order”) (AMSC license term is ten years).

¹³ See AMSC Licensing Order, 4 FCC Rcd. at 6055 (setting out AMS(R)S requirements for AMSC satellites), 6060 (milestones for construction and launch of AMSC-2 and AMSC-3 end in July 1994); AMSC 10-K, at 15-16 (explaining that AMSC has not satisfied AMS(R)S requirements).

¹⁴ Access Charge Reform, 12 FCC Rcd. 15982, 16060 (1997); see also, e.g., Pacific Telesis Group and SBC Communications, Inc., 12 FCC Rcd. 2624, 2647 (1997) (“Our priority is to promote efficient competition, not to protect competitors.”).

in the Access Charge Reform proceeding, the Commission recently issued a public notice requesting interested parties to submit comments to refresh the record in view of developments including that “parties have had the opportunity to observe changes in the level of competition in the marketplace.”¹⁵ Similarly, in the DISCO II rulemaking, concerning foreign entry into the U.S. satellite services market, the Commission issued a Further Notice of Proposed Rulemaking after the successful conclusion of the WTO Telecom Agreement had significantly altered the international framework for market access.¹⁶ The Commission has consistently taken a similar approach in numerous other proceedings in which the record has become stale.¹⁷

¹⁵ Commission Asks Parties to Update and Refresh Record for Access Charge Reform and Seeks Comments on Proposals for Access Charge Reform Pricing Flexibility, Public Notice 98-256 (October 5, 1998).

¹⁶ See Amendment of the Commission’s Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Further Notice of Proposed Rulemaking, FCC 97-252 (July 18, 1997).

¹⁷ See, e.g., Commission Requests Comment to Refresh the Record on Proposals for Blanket Licensing of Satellite Earth Stations Operating in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands and Sharing Between Fixed Terrestrial and Satellite Services in the 17.7-19.7 GHz Frequency Bands, Public Notice 92-27 (September 5, 1997) (requesting new comments on blanket licensing procedures and sharing arrangements in light of intervening grants of authority to construct, launch, and operate multiple FSS systems); In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, Public Notice (July 2, 1997) (seeking new comments on treatment of toll-free vanity numbers in light of fact that existing record was almost two years old and industry was soon to deploy new toll-free access number); In the Matter of Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance for Broadband Personal Communications Services, WT Docket No. 98-100, 13 FCC Rcd. 16857 (July 2, 1998) (“Because ... legal changes [arising from the passage of the Telecommunications Act of 1996] and changes in the telecommunications marketplace have made portions of the record in the Further Forbearance NPRM stale, we terminate that proceeding and seek new comments regarding forbearance ...”). In 1990, the Commission terminated 15 pending rulemaking or policy proceedings in which the existing record was more than two years old. See FCC Terminates 15 “Stale” Proceedings, 1990 FCC LEXIS 115 (January 10, 1990).

In view of the fundamental changes and significant developments discussed above, this well-established precedent, and common sense, require the Commission to take action to refresh the record in this proceeding by soliciting additional comments. Clearly, the public interest is best served by an accurate and complete record. The changes since the initial rounds of comments on the L-Band NPRM have undermined nearly all of the assumptions underlying the policies proposed by the Commission. Indeed, it would be impossible for the Commission to reach a reasoned decision on L-band policies without first obtaining timely and accurate information from interested parties on the current conditions applicable to the L-band and to the MSS market as a whole.

Motorola and Iridium propose that a reasonable course of action would be for the Commission to act quickly to issue a Further Notice of Proposed Rulemaking (“FNPRM”) in this proceeding, seeking comments on the changes in the conditions affecting the L-band since the issuance of the L-Band NPRM and on the appropriate Commission policies for the L-band. The FNPRM should seek another round of initial comments and reply comments. This approach would afford interested parties a reasonable opportunity to refresh a stale record without unduly delaying or disrupting this proceeding.

IV. The Commission Must Not Grant Any Application for Use of the Lower L-Band Until This Proceeding Is Complete

Pending issuance of an FNPRM and completion of this proceeding, the Commission must not alter the *status quo* in the L-band. In particular, the Commission must not grant any of the pending applications for use of the lower L-band.

In the L-Band NPRM, the Commission imposed a “freeze” on new applications in the lower L-band.¹⁸ Notwithstanding this freeze, the Commission has recently placed on public notice applications by seven parties regarding new uses of the lower L-band.¹⁹ Although the “freeze” has thus become largely a fiction, it still prevents most qualified U.S. applicants (like Iridium) from seeking to provide MSS service in the lower L-band.

The proper course of action for the Commission is to complete the present rulemaking, lift the lower L-band freeze, and proceed with lower L-band licensing in an orderly manner – giving all qualified applicants an opportunity to apply to provide service. The appropriate way for the Commission to do this is to open a processing round for the lower L-band, pursuant to the policies adopted in the DISCO-II Order.²⁰ In the interim, the Commission must not grant any of the pending applications for use of the lower L-band. Grant of authorizations in these pending proceedings threatens to reduce significantly the spectrum

¹⁸ See L-Band NPRM, 11 FCC Rcd. at 11683.

¹⁹ See SatCom Systems, Inc., File No. 647-DSE-P/L-98; TMI Communications and Company, L.P., File No. 730-DSE-P/L-98; KITComm Satellite Communications Ltd., File Nos. 85-SAT-LOI-98 & 123-SAT-MISC-98; COMSAT Corporation, File No. 129-SAT-ITC-98; GE LogistiCom, Inc., File No. 1263-DSE-P/L-98; Eaton Corporation, File No. SES-LIC-19980821-01124; Newcomb Communications Inc., File No. SES-LIC-19980415-00436. Motorola and Iridium opposed each of these applications.

²⁰ See Amendment of the Commission’s Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 12 FCC Rcd. 24094, 24173 (1997) (“DISCO-II Order”) (“The Commission generally considers applications for satellite systems in the same frequency bands in discrete processing rounds to ensure that all potentially competing applications are considered concurrently. These processing rounds are established by Public Notices announcing a ‘cut-off date’ for filing applications to be considered in the round.”).

available in the lower L-band for other satellite operators waiting patiently for the “freeze” to be officially lifted.²¹

If the Commission were otherwise inclined to grant any of these pending applications, it should do so by accommodating these applicants only in the upper L-band, which is not affected by the Commission’s lower L-band freeze. The nature of the pending applications makes this approach a reasonable one. It should be noted that GE LogistiCom has withdrawn its application to use the lower L-band,²² which also renders moot the related application of COMSAT Corporation regarding back-up capacity for GE LogistiCom. Significantly, three of the five other applicants (TMI, SatCom and Eaton) have explicitly indicated their willingness to accept an authorization in the upper L-band.²³ Limiting these systems to the upper L-band would also help alleviate the out-of-band interference concerns that Motorola and Iridium have raised in those application proceedings.²⁴ Unless the other two applicants (KITComm and Newcomb) indicate similar flexibility, the Commission must defer action on these two

²¹ The Commission has already granted special temporary authority to SatCom Systems to begin commercial service in the lower L-band. See SatCom Systems, Inc., File No. 217-SSA-98, DA 98-1447 (Int’l Bureau Sat. & Radiocomm. Div. rel. July 20, 1998).

²² See Letter from Peter Rohrbach to the Commission, File Nos. 1263-DSE-P/L-98, SES-STA-19980710-01494 (Feb. 23, 1999).

²³ See Letter from Gregory C. Staple to the Commission, File No. 730-DSE-P/L-98 (Dec. 4, 1998) (“TMI stated that it was willing to initiate U.S. service solely in the upper L-band ... and would not object to an initial license grant for operating authority in the upper L-band only.”); Letter from Gregory C. Staple to the Commission, File No. 647-DSE-P/L-98 (Dec. 4, 1998) (“SatCom would not object to an initial license grant for operating authority only in the upper L-band”); Opposition of Eaton Corporation to Petitions to Deny, File No. SES-LIC-19980821-01124, at 1 (Nov. 2, 1998) (“By this opposition, Eaton clarifies that it seeks a blanket license to access the AMSC satellite system only on upper L-band frequencies.”).

²⁴ See Petition [of Motorola and Iridium] to Deny or Defer, File No. 647-DSE-P/L-98, at 5 & App. 1 (Apr. 24, 1998); Petition [of Motorola and Iridium] to Deny or Defer, File No. 730-
(Continued...)

applications, pending completion of this rulemaking and initiation of a lower L-band processing round.²⁵

V. Conclusion

For the foregoing reasons, Motorola and Iridium submit that the Commission should refresh the record in this proceeding and seek current and accurate information by requesting additional comments on the issues discussed above, any other conditions affecting MSS service in the L-band, and the appropriate Commission policies to encourage a robust and competitive MSS market. Furthermore, pending completion of this proceeding and initiation of a lower L-band processing round, the Commission must not grant any of the pending

DSE-P/L-98, at 5 and App. 1 (May 29, 1998); Petition [of Motorola and Iridium] to Deny or Defer, File No. SES-LIC-19980821-01124, at 5-6 (Oct. 19, 1998).

²⁵ Motorola and Iridium have addressed in detail the reasons that the Commission should not act on the KITComm letter of intent or the Newcomb application in the context of those proceedings. See Petition to Dismiss or Defer Letter of Intent and Deny Request for Waiver [of Motorola and Iridium], File No. 85-SAT-LOI-98 (Aug. 19, 1998); Consolidated Reply of [Motorola] and Iridium, File No. 85-SAT-LOI-98 (Oct. 23, 1998); Petition to Deny or Defer [of Motorola and Iridium], File No. SES-LIC-19980415-00436 (Oct. 19, 1998); Consolidated Reply of [Motorola] and Iridium, File No. SES-LIC-19980415-00436 (Nov. 12, 1998).

applications for use of the lower L-band. If it grants such applications, the Commission should do so only by accommodating these applicants in available upper L-band spectrum.

Respectfully submitted,

Motorola, Inc.



By: Philip L. Malet

Maury D. Shenk

Matthew S. Yeo

Steptoe & Johnson LLP

1330 Connecticut Avenue, N.W.

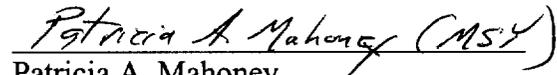
Washington, DC 20036

(202) 429-3000

Counsel for Motorola, Inc.

Michael D. Kennedy
Corporate Vice President and Director
Global Spectrum and
Telecommunications Policy
Barry Lambergman
Manager, Satellite Regulatory Affairs
Motorola, Inc.
1350 I Street, N.W.
Washington, D.C. 20005
(202) 371-6900

Iridium LLC



By: Patricia A. Mahoney

Assistant General Counsel

Regulatory and Trade Policy

Audrey Allison

Counsel, Regulatory and Trade Policy

Iridium LLC

1575 Eye Street, N.W.

Washington, D.C. 20005

(202) 408-3800

April 15, 1999

CERTIFICATE OF SERVICE

I, Christine A. Delp, hereby certify that the foregoing Motion to Refresh the Record was served this 15th day of April 1999, by hand delivery (or first class mail where indicated by an asterisk (*)) on the following:

Chairman William E. Kennard
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Michael K. Powell
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Roderick Porter, Acting Chief
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Harold W. Furchtgott-Roth
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

James Ball, Associate Chief, Policy
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Commissioner Gloria Tristani
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Linda Haller, Senior Legal Advisor
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Tom Tycz, Chief
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Cassandra Thomas, Deputy Chief
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Harry Ng, Engineering Advisor
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Fern Jarmulnek, Chief
Satellite Policy Branch
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Jennifer Gilsenan
Satellite Policy Branch
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
The Portals, 445 12th Street, S.W.
Washington, D.C. 20554

Lon C. Levin*
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
10802 Parkridge Boulevard
Reston, VA 22091

Bruce D. Jacobs*
Glenn S. Richards
Robert L. Galbreath
Fisher Wayland Cooper Leader & Zaragoza LLP
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006

Joseph D. Hersey, Jr., Chief*
Spectrum Management Division
United States Coast Guard
2100 Second Street, S.W.
Washington, D.C. 20593-0001

David Otton*
President and CEO
Celstat America, Inc.
3460 Torrance Boulevard
Suite 220
Torrance, CA 90503

Howard D. Polsky*
Neal T. Kilminster
Nancy J. Thompson
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, MD 20817

Debra A. Smilley-Weiner*
Lockheed Martin Telecommunications
1322 Crossman Avenue, Bldg. 580
Sunnyvale, CA 94089

Gerald C. Musarra*
Lockheed Martin Corporation
1725 Jefferson Davis Highway
Suite 300
Arlington, VA 22202-4127

William F. Adler*
Globalstar
3200 Zanker Road
San Jose, CA 95134

Raymond G. Bender, Jr.*
Richard S. Denning
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802

William D. Wallace*
Crowell & Moring LLP
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Leslie A. Taylor*
Guy T. Christiansen
Leslie Taylor Associates
6800 Carlynn Court
Bethesda, MD 20817

Caressa A. Bennet*
Dorothy E. Cukier
Bennet & Bennet, PLLC
1019 Nineteenth Street, N.W.
Suite 500
Washington, D.C. 20036

Gary K. Noreen*
Radio Satellite Corporation
P.O. Box 93817
Pasadena, CA 91109-3817


Christine A. Delp