American Mobile

EX PARTE OR LATE FILED

Lon C. Levin
Vice President and
Regulatory Counsel

PHONE: 703 758 6150
FAX: 703 758 6189
EMAIL: lon.levin@ammobile.com

May 3, 1999

RECEIVED

MAY 3 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TW-B204
Washington, D.C. 20554

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 Ms. Salas:

Attached for the record in the above-referenced proceedings are a petition filed by Motorola and Iridium concerning access to the lower L-band and replies by Inmarsat, Comsat, Globalstar, and AMSC. The request by Motorola and Iridium reflects the logical extension of the Commission's accepting for filing the applications that are at issue in the above-referenced proceedings, applications which propose to operate foreign-licensed satellite systems in the L-band.

AMSC's fundamental position is that there is a severe and worsening spectrum shortage in the L-band, a shortage that was recognized by the Commission in its early MSS licensing orders and reiterated in the 1996 *Lower L-band NPRM*. The primary evidence of this shortage is the continued inability of the U.S. to coordinate 10 MHz for AMSC's licensed system. The Inmarsat and Comsat responses to Motorola/Iridium corroborate the seriousness of this shortage, the worsening problems of coordinating L-band spectrum, and their understanding that the Commission has an established policy of supporting AMSC's access to 10 MHz of L-band spectrum.

The most appropriate Commission action, therefore, would be the dismissal of the pending applications and the adoption of the proposals made in the *Lower L-band NPRM* that the Commission not license any additional MSS systems until it is able to coordinate AMSC's access to sufficient core spectrum, which the Commission has consistently decided is 10 MHz.

Very truly yours,

Lon C. Levin

cc: Daniel Connors
Jennifer Gilsenan
Karen Gulick
Linda Haller
Ari Fitzgerald
Fern Jarmulnek
Paul Misener
Susan Steiman
Peter Tenhula
Cassandra Thomas
Thomas Tycz

TABLE OF CONTENTS

I. Introduction and Summary 1

II. Conditions Have Changed Radically Since the Commission Issued the L-Band NPRM in 1996 3

III. Changed Circumstances and Precedent Require the Commission To Seek Further Comments in This Proceeding 7

IV. The Commission Must Not Grant Any Application for Use of the Lower L-Band Until This Proceeding Is Complete 9

V. Conclusion 12

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**	**IB Docket No. 96-132**

To: The Commission

MOTION TO REFRESH THE RECORD

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

Patricia A. Mahoney (MSY)

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

Christine A. Delp

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	))))	IB Docket No. 96-132

OPPOSITION OF AMSC SUBSIDIARY CORPORATION TO MOTION TO REFRESH THE RECORD

AMSC Subsidiary Corporation ("AMSC") hereby urges the Commission to reject the Motion To Refresh the Record, filed April 15, 1999 by Iridium LLC and Motorola, Inc. ("Iridium").

Wireless communications systems need access to spectrum to operate and they need consistent regulatory policies concerning that spectrum. The Commission granted AMSC a license to operate an MSS system that it said would need access to at least 10 MHz.[1] In the *Lower L-band NPRM,* the Commission recognized that the lower L-band plays a vital role in coordination of access to that 10 MHz.[2] Investors in AMSC's system, including resellers that have developed their own MSS products and users that have purchased their own equipment, have made their investments based on the reasonable expectation that the Commission would maintain this policy.

---

1 *See* Notice of Proposed Rule Making, Docket No. 84-1234, 50 FR 8149, para. 23 (January 28, 1985); Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff'd sub nom.* Aeronautical Radio, Inc. v. FCC, 983, F.2d 275 (D.C. Cir. 1993).

2 Notice of Proposed Rulemaking, Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the Upper and Lower L-band, IB Docket No. 96-132, 11 FCC Rcd 11675, paras. 9-11, 16 (June 18, 1996)

AMSC has spent $650 million to launch its system, which has been operational for little more than three years. Since launch, its satellite revenues have doubled every year. Nonetheless, AMSC's competitors continue to use the Commission's processes to call into question the company's access to the spectrum for which it was licensed and which it needs to provide service and develop. Iridium is the latest to join the chorus, arguing that the Commission should not use the lower L-band to help AMSC coordinate access to sufficient spectrum.

As an initial matter, Iridium appears to have forgotten the proverb that "people in glass houses shouldn't throw stones." According to press reports, Iridium lost over $500 million in just the first quarter of 1999 and has experienced disappointing sales. These results make it clear that Iridium today does not need the spectrum that it was assigned in 1995.

The current spectrum needs of Iridium and AMSC, however, should not be the issue. All that should matter at this early stage for both companies and for the public interest is having stable Commission spectrum access policies. The development of a new satellite service is a difficult one, as Iridium is learning. There are challenges that require innovation, flexibility, and patience. Both Iridium and AMSC should be able to rely on consistent Commission policies for access to their core spectrum during the terms of their licenses. Historically, the Commission has

recognized this and provided licensees with ample support as long as they met their milestones. AMSC therefore urges the Commission to reinforce that practice here and reject the Iridium petition.

Respectfully submitted,

AMSC SUBSIDIARY CORPORATION

Bruce D. Jacobs
Stephen J. Berman
Fisher Wayland Cooper
Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

Lon C. Levin
Vice President and Regulatory Counsel
AMSC Subsidiary Corporation
10802 Park Ridge Boulevard
Reston, Virginia 20191
(703) 758-6000

April 28, 1999

CERTIFICATE OF SERVICE

I, Elinor W. McCormick , a secretary to the law firm of Fisher Wayland Cooper Leader & Zaragoza L.L.P., hereby certify that on this 28th day of April 1999, I served a true copy of the foregoing **"OPPOSITION OF AMSC SUBSIDIARY CORPORATION TO MOTION TO REFRESH THE RECORD"** by first class United States Mail, postage prepaid, upon the following:

Philip L. Malet
Maury D. Shenk
Matthew S. Yeo
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Patricia A. Mahoney
Assistant General Counsel
Regulatory and Trade Policy
Audrey Allison
Counsel, Regulatory and Trade Policy
Iridium, L.L.C.
1575 Eye Street, N.W.
Washington, D.C. 20005

Michael D. Kennedy
Barry Lambergman
Motorola, Inc.
1350 I Street, N.W.
Washington, DC 20005

Elinor W. McCormick

J:\DATA\CLIENT\42\4232\PLDG OLD\GEL.J05

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	)))	IB Docket No. 96-132

To: The Commission

OPPOSITION OF INMARSAT Ltd TO "MOTION TO REFRESH THE RECORD"

Inmarsat Ltd ("Inmarsat"), by counsel and pursuant to Section 1.45(a) of the Commission's Rules, hereby submits its Opposition to the "Motion to Refresh the Record" ("Motion") filed by Motorola, Inc. ("Motorola") and Iridium LLC ("Iridium") on April 15, 1999 in the above-captioned proceeding.[1] As discussed more fully below, Motorola and Iridium have failed to present any information that would warrant reopening of the record in this proceeding at this time. The relevant facts affecting mobile satellite services ("MSS") in the L-band remain largely unchanged since the Commission issued its Notice of Proposed Rulemaking in this proceeding. The Commission should therefore deny Iridium's request.

Background

The Commission began this proceeding in 1996 when it proposed to assign the first 28 MHz of upper and lower L-band spectrum[2] coordinated for U.S. systems to

[1] Inmarsat was not served a copy of the Motion and thus was unaware of it until several days after the filing date. Further, as of today's date, the Commission has not yet placed this Motion on public notice. Inmarsat has attempted to submit these comments as expeditiously as possible owing to its interest in this proceeding. In the event the Commission places the Motion on public notice, Inmarsat reserves the right to submit more comprehensive comments in response.

[2] The upper L-band is generally defined as the bands 1545-1559 MHz and 1646.5-1660.5 MHz. The lower L-band is defined as 1525-1544 MHz and 1626.5-1645.5 MHz.

American Mobile Satellite Corporation ("AMSC") which was then the only U.S. MSS system licensed to operate in the upper L-band.[3] The Commission noted that

> Currently, in the entire L-band, there is 66 MHz of spectrum available for Earth-to-space and space-to-Earth transmissions for U.S. and non-U.S. licensed MSS systems. At the present time, Inmarsat and four administrations (Canada, Mexico, the Russian Federation and the United States) are coordinating spectrum for a variety of MSS systems in the vicinity of North America. The U.S. has been at a disadvantage during this coordination because it began coordinating the upper L-band and only later began focusing on the lower L-band while Inmarsat and the other administrations have been coordinating spectrum throughout the entire L-band....In the course of international coordination, it has become clear that the U.S. will not be able to secure sufficient spectrum in the upper L-band for its existing licensee, AMSC. NPRM at ¶¶8-9.

Numerous parties filed comments and reply comments in response to the NPRM. Most notably, Comsat Corporation (in its capacity at that time as Inmarsat signatory) filed pleadings which provided detailed information regarding the international coordination issues and efforts affecting the L-band referenced by the Commission.[4]

Those comments underscored and expanded on two crucial points recognized by the Commission in the NPRM.

- *First*, the L-band is heavily crowded, both over the United States and internationally.
- *Second*, the existing coordination process is working well to ensure equitable sharing of the limited available spectrum resource. This process of annually reviewed spectrum sharing arrangements was designed to allocate capacity for competitive commercial use and to ensure sufficient additional spectrum for

[3] *See* Notice of Proposed Rulemaking, IB Docket No. 96-132, FCC 96-259 (rel. June 18, 1996)("NPRM")
[4] *See* Comments of Comsat Corporation, IB Docket No. 96-132 (Sept. 17, 1996); Reply of Comsat Corporation, IB Docket No. 96-132 (Oct. 7, 1996).

global maritime distress and safety system ("GMDSS") traffic based on short-term predictions of future need.

These important facts have not changed. In fact, this coordination mechanism, which was made possible in part by the Commission's own efforts, has since been extended to other parts of the world covered by ITU Regions 1& 3 and is working satisfactorily to accommodate an even larger number of GSO/MSS satellites in that part of the orbit. Therefore, the Commission need not seek additional comment at this time.

Discussion

Iridium and Motorola contend that the record in this proceeding has become stale due to fundamental changes in the satellite market, especially with respect to MSS services in the lower L-band. Specifically, they cite to such events as the privatization of Inmarsat,[5] the commencement of commercial operations by Iridium,[6] the potential entry of other MSS competitors,[7] the availability of new MSS spectrum in the 2 GHz band,[8] the failure of AMSC to meet milestones and other requirements mandated by the Commission [9] and the alleged increase in requests by non-U.S. companies for access to U.S. spectrum following on the conclusion of the World Trade Organization ("WTO") Agreement.[10]

Nothing in the Motion speaks to any significant new developments regarding the status of international L-band coordination, which remains fundamentally unchanged in the years since comments and replies were filed in this proceeding. Because this coordination process remains at the heart of any final Commission decision regarding

[5] Motion at 4.
[6] Id.
[7] Motion at 6.
[8] Motion at 5.

domestic L-band licensing rules, no good cause exists for reopening the record at this time.

Briefly, most of the changes cited by Motorola and Iridium either are marginally relevant to the issues at hand or have been addressed by the Commission already either in this proceeding or in others. First, as noted, Inmarsat became a private U.K. company as of April 15, 1999. This simply means that Inmarsat no longer participates in the coordination process on its own behalf as an Intergovernmental Satellite Organization, but instead will be represented in the future by the U.K. government. Inmarsat's change in status in no way affects either its spectrum capacity needs (which consist basically of space segment necessary to maintain four prime operational Inmarsat-3 satellites) or the international process for coordinating such needs.[11] Further, Inmarsat remains responsible for ensuring sufficient L-band spectrum to meet worldwide GMDSS and AMS(R)S needs.

Second, Motorola and Iridium fail to provide any compelling reason why the availability of new spectrum for MSS operations at 2 GHz, which is the preferred allocation for IMT-2000 applications, should in any way affect the L-band proceeding. If anything, attempts to allocate new spectrum bands for MSS use merely serve to underscore the congested state of the L-band, a fact already well known to the Commission. Furthermore, the potential for 2 GHz MSS already has been noted by parties to this proceeding.[12]

---

[9] Motion at 7.
[10] Motion at 6.
[11] It should be noted that Inmarsat's current spectrum requirements are the result of actual customer usage demands.
[12] See, e.g., Reply Comments of Comsat at 3.

Third, the actual or potential entrance by new MSS service providers now or in the future (whether it be Iridium or any other foreign or domestic service provider) does not warrant reopening of the record. The Commission was well aware of this possibility when it issued its L-Band NPRM and chose not to accept applications for additional systems at that time due to the aforementioned international crowding in the L-band and its desire to preserve as much spectrum as possible for AMSC. If anything, the situation with respect to international use of this band has become even more acute since the Commission made that decision.[13]

Fourth, as indicated before, the usage of the L-band allocations in Regions 1 & 3, following a multilateral coordination process similar to the one for the North American region, has been aligned with the assignments made in the Mexico City Agreement to which the Commission was a signatory. It is important to realize that the spectrum used by North American GSO/MSS systems over North America is being fully reused by other GSO/MSS systems in ITU Regions 1 & 3. This also would render any reconsideration of the lower L-band acutely problematic.

Finally, Part IV of the Motion appears simply to be an attempt by Iridium to block access to the U.S. market by other domestic and foreign competitors (including, potentially, Inmarsat in its new capacity as a private company). However, as noted herein, no justification exists for reopening the record in this proceeding and thereby incurring further regulatory delay.

[13] Projections regarding AMSC's traffic shortfall do not alter this equation. Nor do reports of similar results experienced by Iridium. *See* "Glitches Surface as Iridium Phones Go To War," The Wall Street Journal, Vol. CCXXXIII,No. 8, April 27, 1999 at B1. The coordination process currently in place is

Conclusion

In short, contrary to the claims made by Iridium and Motorola, no recent developments in MSS warrant reopening of the record in this proceeding. Rather, the fundamental facts of existing heavy L-band spectrum use and satisfactory international coordination regime to manage that use are even more dominant now than they were two and half years ago. For this reason, the Commission should deny the Motion of Motorola and Iridium to refresh the record in this proceeding.

Respectfully submitted,

INMARSAT Ltd

By: _____

Kelly Cameron
POWELL GOLDSTEIN
FRAZER & MURPHY LLP
1001 Pennsylvania Ave., N.W.
Sixth Floor
Washington, D.C. 20004
(202) 347-0066

Its Attorney

April 28, 1999

::ODMA\PCDOCS\WSH\125280\1

designed to ensure that spectrum not employed by one operator will be reallocated to others who have immediate need for it. As noted, the L-band is already saturated with operators.

CERTIFICATE OF SERVICE

I, Kelly Cameron, hereby certify that on this 28th day of April, 1999, a copy of the foregoing Opposition of Inmarsat Ltd., was mailed via first-class mail, postage prepaid, to the below-listed persons.

James L. Ball *
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Thomas Tycz *
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Bruce D. Jacobs
Glenn S. Richards
Fisher Wayland Cooper Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W., Suite 400
Washington, D.C. 20006

Lon C. Levin
AMSC Subsidiary Corporation
10802 Parkridge Blvd.
Reston, VA 22091

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

Leslie A. Taylor
Leslie Taylor Associates, Inc.
6800 Carlynn Court
Bethesda, MD 20817

William D. Wallace
Crowell & Moring L.L.P.
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Michael D. Kennedy
Barry Lambergman
Motorola, Inc.
1350 Eye Street, N.W., Suite 400
Washington, D.C. 20005

Patricia A. Mahoney
Audrey Allison
Iridium L.L.C.
1575 Eye Street, N.W.
Washington, D.C. 20005

Philip L. Malet
Maury D. Shenk
Matthew S. Yeo
Steptoe & Johnson L.L.P.
1330 Connecticut Ave., N.W.
Washington, D.C. 20036

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

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

Debra A. Smilley-Weiner
Deputy General Counsel
Lockheed Martin Telecommunications
1322 Crossman Avenue, Building 580
Sunnyvale, CA 94089

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

David Otten
Celsat America, Inc.
3460 Torrence Blvd., Suite 220
Torrence, CA 90503

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

Caressa D. Bennet
Dorothy E. Cukier
Bennet & Bennet PLLC
1019 19th Street, N.W., Suite 500
Washington, D.C. 20036

Neal T. Kilminster
Associate General Counsel
COMSAT Corporation
6560 Rock Spring Drive
Bethesda, MD 20817

Kelly Cameron

Kelly Cameron

* Via Hand Delivery