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

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In the Matter of	)	
	)	
Request for Declaratory Ruling on Partial-Band Licensing of Earth Stations in the Fixed Satellite Service that Share Terrestrial Spectrum	)	RM No. 9649
	)	
Petition for Rule Making to Set Loading Standards for Earth Stations in the Fixed Service	)	

OPPOSITION OF HOME BOX OFFICE

Home Box Office ("HBO"), a Division of Time Warner Entertainment Company, L.P., by its attorneys, hereby opposes the above-captioned Request For Declaratory Ruling And Petition For Rule Making Of The Fixed Wireless Communications Coalition ("Coalition").[1/]

I. BACKGROUND/INTEREST OF HBO

A. Background

In the Petition, the Coalition seeks a declaratory ruling from the Commission, and the adoption of a new rule, that would require applicants for initial authorizations, major modifications or renewals of fixed satellite service ("FSS") earth stations that share frequencies with terrestrial services, to specify and justify the precise bandwidth to be utilized at the earth station. Under the Coalition's proposal, the applicant would be authorized to operate only on specific frequencies within the applicable FSS band and with total bandwidth no more than two times the amount justified in the application. Any change in the frequencies specified in the

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[1/] Request For Declaratory Ruling And Petition For Rule Making Of The Fixed Wireless Communications Coalition, filed May 5, 1999 ("Petition").

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earth station license would require prior coordination and any increase in the authorized bandwidth would require a separate application for modification of license.[2/]

Other rule changes proposed by the Coalition would impose "loading" standards on FSS earth station licensees and would require such licensees, once they accepted cases of potential interference from one terrestrial facility, to accept similar potential interference from an unlimited number of additional terrestrial facilities.[3/]

For the reasons explained below, HBO opposes the Coalition's Petition. First, the Coalition's proposals fail to recognize the operational realities of major satellite uplink facilities that employ multiple antennas and communicate with a constantly changing mix of FSS satellites (both U.S. and non-U.S. licensed) over a wide range of orbital arc and frequencies. The Coalition's proposals would make it difficult, if not impossible, to operate earth station facilities with the flexibility demanded in today's satellite service business environment.

Moreover, requiring earth station licensees to accept unlimited potential interference from terrestrial facilities if the earth station licensee approved a single interference exception would be counterproductive to good faith coordination efforts. Not only would such a rule subject earth station licensees to intolerable future interference, it would discourage such licensees from granting <u>any</u> exceptions because to do so could open the flood gates to seriously harmful interference in the future. Finally, the Coalition's proposals would create additional paperwork, regulatory filings and delays as an already overwhelmed Commission staff would be called upon to process even more requests for earth station licenses and modifications.

[2/] Petition, Appendices B and C.

[3/] Petition, Appendix C.

B. Interest of HBO

HBO is a leading provider of pay television services in the United States, distributing multiple feeds of its HBO and Cinemax services to approximately 24.6 million subscribers. Since 1983, HBO has operated its own private transmit/receive earth station complex in Hauppauge, New York, just outside of New York City. HBO currently uses the Hauppauge facility to transmit to 18 satellite transponders on a twenty-four hour per day basis. These transmissions contain more than 80 feeds of programming services for distribution to cable television systems, wireless cable systems, direct broadcast satellite ("DBS") operators, SMATV systems and other video distributors. HBO also uses the complex to receive video programming from remote locations for use in its programming services (i.e., "backhaul" or "contribution"). From time to time, HBO uses its facilities to transmit and/or receive information on behalf of other entities. The Hauppauge earth station complex also serves as a backup for other uplink facilities in the event such facilities malfunction or are damaged.

Over the years, HBO has expanded its Hauppauge operations by adding antennas and other facilities to meet its growing business needs. Today, there are a total of 11 antennas on the site performing a multitude of satellite transmit/receive functions.

Because the proposals set forth in the Petition would severely restrict HBO's operations at Hauppauge, and create potential disruptions to HBO's programming services, HBO opposes the Petition.

II. THE COALITION'S PROPOSALS WOULD SEVERELY DISRUPT OPERATIONS AT HAUPPAUGE AND SIMILAR FACILITIES

A. Limited Authorized Bandwidth/Loading Standards

The Coalition's proposals to limit earth station authorizations to a portion of the available satellite bandwidth and to impose loading standards fail to account for the current circumstances under which major satellite uplink/downlink facilities operate. Contrary to the Coalition's suggestions, major earth station facilities do not function in a static environment where the same frequencies are deployed at the same elevation angles and azimuths for long periods of time. Unlike terrestrial facilities, which are licensed on discrete paths at specific frequencies, earth stations constantly change their orientations and frequencies as they switch to transmit information to or receive information from a large number of satellites and transponders.

An example of this can be seen from the attached information prepared by the staff at HBO's Hauppauge facility (Attachment A). Since the Hauppauge facility was licensed, antennas deployed there have communicated with a total of 24 different satellites, operating at 18 different orbital locations (in a range between 58° W.L. and 135° W.L.) and have used a total of 34 separate frequencies (24 in the C-band and 10 in the Ku-band).

In many cases, the particular satellite and frequency that must be used is beyond the control of the earth station operator. For example, if HBO wishes to transmit or receive programming produced by a third party, it must access the satellite and transponder arranged by the program producer. Even if HBO is in charge of procuring satellite capacity for an event, the satellite and transponder used are dependent upon the technical specifications, market conditions and transponder availability at a specific date and time.

Even those earth stations that HBO uses for network distribution, which typically are fixed at the same frequencies and pointed at the same satellite 24 hours per day, cannot afford to be artificially restricted in their ability to change frequencies and orientation. HBO, like many other programming networks, has elaborate arrangements in place with its satellite capacity suppliers to restore services immediately in the event of interruption to any one of HBO's network distribution feeds. If it became necessary to implement these plans, HBO could be required to repoint antennas to different satellites and/or change to frequencies (that may not be known until the interruption event occurs) within minutes. The prospect of having to conduct a frequency coordination or to seek a modification of license under these circumstances simply would be unacceptable.

Thus, the proposal by the Coalition to restrict the operational flexibility of facilities such as HBO's would not be practicable. These types of facilities demand the ability constantly, and without delay, to communicate over a wide range of orbital arc and frequency spectrum. The Commission's current licensing parameters make this operational flexibility possible and must not be disturbed.[4/]

B. Interference Exceptions

Equally problematic are the Coalition's proposals to require an earth station licensee to accept multiple cases of potential terrestrial interference once the licensee agrees to waive its interference protection rights and permit a single exception to enable a terrestrial facility to be

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[4/] The foregoing discussion demonstrates the great need for operational flexibility at an earth station facility that is used primarily for the private transmission needs of the licensee. Even greater flexibility would be required by commercial teleports that are in the business of serving the varied requirements of hundreds of customers.

built. This proposal ignores the very real instances where the environment around an earth station facility changes over time, as new radio interference sources are introduced, the terrain is altered by construction and buildings are built and demolished. These real world changes are precisely the reason that careful coordination between earth stations and terrestrial facilities is necessary. It is just not predictable with any level of confidence that multiple sources of potential interference can be added on top of a single exception that has been granted previously without seriously damaging the operations of an earth station complex.

The Commission has always expected existing licensees and new applicants that share frequencies to cooperate with each other and try to accommodate each other's operations without creating harmful interference.[5/] The Coalition's proposal would have the opposite effect. Earth station licensees would be much less willing to grant any waivers of their interference protection rights if, by granting a single waiver, they could expose themselves to many more potential interference cases in the future. If the Commission wishes to continue to encourage cooperation in the coordination process, it should adhere to its existing rules and reject the Coalition's proposals.

C. Paperwork/Regulatory Burdens

At a time when the Commission is attempting to streamline its earth station licensing process, eliminate delays and make its licensing procedures more responsive to the needs of satellite earth station licensees and their customers, the Coalition's proposal cuts against the grain. Just recently, the Commission announced several changes in its earth station licensing process designed to reduce processing time and eliminate unnecessary paperwork. At the same

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[5/] See 47 C.F.R. § 101.103(d)(1).

time, the Commission announced its intent to propose in the near future even more deregulatory initiatives.[6/] As Chairman Kennard observed,

> These measures are an excellent example of how the Commission can adjust its processes to reflect the increased competition and consumer demand that we are seeing in the satellite marketplace. It is certainly in the best interests of consumers and the satellite industry that we make our licensing procedures as quick and efficient as possible.[7/]

In contrast to these initiatives, the Coalition's proposals would require earth station applicants to submit more information with their applications (frequency utilization showings), file more frequent applications (applications to modify licenses to add bandwidth), conduct more frequency coordinations (to change from the bandwidth previously authorized) and file loading reports. Adoption of these proposals would add more regulatory burdens on a class of licensees that the Commission already has acknowledged is over-regulated. Moreover, it would impose large amounts of additional work on an overtaxed Commission staff, and perhaps most importantly, would create additional delays in providing satellite services to consumers.

[6/] "FCC International Bureau Speeds Up Earth Station Licensing," FCC News Release (June 24, 1999); "Commission Launches Earth Station Streamlining Initiative," Public Notice, DA 99-51259 (June 25, 1999).

[7/] Id. "FCC International Bureau Speeds Up Earth Station Licensing" at 1.

III. CONCLUSION

For all the foregoing reasons, the Commission should dismiss the Coalition's Petition summarily and thereby reaffirm the flexible satellite earth station licensing policies that have served the public well for many years.

Respectfully submitted

HOME BOX OFFICE, a Division of
Time Warner Entertainment Company, L.P.

By: _____

Benjamin J. Griffin
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
(202) 434-7300

Its Attorneys

July 12, 1999

DCDOCS: 153423.1
(3@dr01!.doc)

As of July 8, 1999

Summary and History of Satellites Uplinked by HBO Hauppauge

Number of Satellites: 24		Number of Orbital Locations: 18		Number of Different Frequencies		
					C-Band: 24*	Ku-Band: 10
1	G Star 2	1	125 Deg W	1	5945 MHz	14060 MHz
2	Galaxy IR	2	133 Deg W	2	5965 MHz	14080 MHz
3	Galaxy IR	3	134 Deg W	3	5985 MHz	14123 MHz
4	Galaxy IIIR	4	95 Deg W	4	6005 MHz	14160 MHz
5	Galaxy IV	5	99 Deg W	5	6025 MHz	14172 MHz
6	Galaxy V		125 Deg W	6	6045 MHz	14221 MHz
7	Galaxy VI		99 Deg W	7	6065 MHz	14260 MHz
8	Galaxy VII	6	91 Deg W	8	6085 MHz	14368 MHz
9	Galaxy IX	7	123 Deg W	9	6105 MHz	14392 MHz
10	GE 1	8	103 Deg W	10	6125 MHz	14466 MHz
11	GE 2	9	85 Deg W	11	6145 MHz	
12	GE 3	10	87 Deg W	12	6165 MHz	
13	Pan Am Sat 5	11	58 Deg W	13	6185 MHz	
14	Satcom 3	12	131 Deg W	14	6205 MHz	
15	Satcom 4	13	83 Deg W	15	6225 MHz	
16	Satcom C3		131 Deg W	16	6245 MHz	
17	Satcom C4	14	135 Deg W	17	6265 MHz	
18	Satcom K1		85 Deg W	18	6285 MHz	
19	SBS 6	15	74 Deg W	19	6305 MHz	
20	Spacenet 4	16	101 Deg W	20	6325 MHz	
21	Telstar 302		85 Deg W	21	6345 MHz	
22	Telstar 402		85 Deg W	22	6365 MHz	
23	Telstar 4	17	89 Deg W	23	6385 MHz	
24	Telstar 5	18	97 Deg W	24	6405 MHz	

* All 24 C-Band frequencies have been utilized

CERTIFICATE OF SERVICE

The undersigned, Jette Ward, a secretary with the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. hereby certifies that this 12th day of July, 1999, I have caused a true and correct copy of the foregoing **OPPOSITION OF HOME BOX OFFICE** to be served via U.S. first class mail, postage prepaid, on the following:

Mr. Jack Keating
President
Association of Public-Safety Communications
Officials-International, Inc.
c/o 1666 K Street, N.W.
Suite 1100
Washington, D.C. 20006

Member, Fixed Wireless Communications Coalition

Jette Ward

Jette Ward