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

In the Matter of	)	
Amendment of Parts 2 and 25 to Implement the Global Mobile Personal Communications by Satellite (GMPCS) Memorandum of Understanding and Arrangements	)	IB Docket No. 99-67
Petition of the National Telecommunications and Information Administration to Amend Part 25 of the Commission's Rules to Establish Emissions Limits for Mobile and Portable Earth Stations Operating in the 1610-1660.5 MHz Band	)	RM No. 9165

REPLY COMMENTS OF TMI COMMUNICATIONS AND COMPANY, L.P.

TMI Communications and Company, Limited Partnership ("TMI"), by its attorneys, hereby comments on the Commission's *Notice of Proposed Rule Making* (*"NPRM"*) in the above-captioned proceeding.[1] TMI supports the Commission's efforts to implement the Global Mobile Personal Communications by Satellite ("GMPCS") Memorandum of Understanding ("GMPCS-MoU") and recognizes the need, going forward, to enable consumers to transport and use mobile satellite terminals across national boundaries through the proposed FCC equipment certification process. However, the definition of GMPCS should not be expanded to include single-satellite systems such as TMI's, and the Commission should not require that terminals used in conjunction with existing regional mobile-satellite service ("MSS") systems be certified or bear the FCC or ITU marks to be used in, or traverse, the United States. A blanket license issued under Part 25 of

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[1] *See Notice of Proposed Rule Making*, FCC 99-37 (released Mar. 5, 1999) (*"NPRM"*).

the Commission's Rules should be legally sufficient, as it is today, to enable such MSS terminals to operate in the United States.

The Commission should also be prepared to relax its proposed out-of-band emissions standards -- for which there currently is no demonstrated need -- and to subject MSS operators to those standards only as necessary in the coming years. Further, the Commission should not subject existing MSS systems to E911 or positioning requirements that go beyond their current technical capabilities.

I. Introduction and Background

TMI provides MSS on a wholesale basis through its Canadian-licensed MSAT-1 satellite and associated ground facilities in Gloucester, Ontario, Canada. MSAT-1 has a North America-wide footprint and a configuration similar to the AMSC-1 system operated by AMSC Subsidiary Corporation ("AMSC"). AMSC has held a de facto monopoly over the provision of L-band MSS in the United States since it began offering service in 1996. Pursuant to the Commission's *DISCO II Order*[2] and the World Trade Organization's Basic Telecom Agreement,[3] the U.S. market for MSS was ostensibly opened in 1997 to foreign-licensed satellites, such as MSAT-1; and TMI filed an application with the Commission on March 30, 1998, to provide competitive MSS space segment in the United States.[4] This application is currently pending.

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[2] *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*, IB Docket No. 96-111, *Report and Order*, 12 FCC Rcd 24094 (1997).

[3] The WTO Basic Telecom Agreement is contained in the General Agreement on Trade in Services, Fourth Protocol (Apr. 30, 1996), 36 I.L.M. 336 (1997).

[4] *See* File No. 730-DSE-P/L-98. TMI currently provides limited MSS in the United (continued...)

In the *NPRM*, the Commission proposes to allow GMPCS terminals bearing an ITU GMPCS-MoU Registry mark -- which means that they have been type approved by a participating administration abroad -- to enter the United States. However, terminals would not be able to operate in the United States, or sold or leased to U.S. customers, unless the GMPCS system to be accessed by those terminals is authorized to provide service in the United States. Additionally, the *NPRM* proposes out-of-band emission limits in the Global Navigation Satellite System ("GNSS") band to protect the Global Positioning System ("GPS") and the Russian Global Navigation Satellite System ("GLONASS"). The Commission also seeks comment on extending E911 requirements to GMPCS operators.

II. The Definition of GMPCS Should Not Be Expanded to Include Regional MSS Systems Such as TMI.

GMPCS is defined in the 1996 Final Report of the World Telecommunications Policy Forum as "any satellite system . . . providing telecommunication services directly to end users from a constellation of satellites."[5] TMI provides services from only one geostationary satellite, MSAT-1. Hence, it does not appear that TMI falls under the definition a GMPCS service provider as contemplated in the 1996 report, and the Commission should not expand this definition to include systems such as TMI's that do not operate from a constellation of satellites.[6]

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[4](...continued)
States pursuant to FCC grants of special temporary authority ("STA") to TMI and certain service providers for technical and commercial trials. *See, e.g.*, File Nos. SES-STA-19981218-02052 (SatCom Systems, Inc. STA), SES-STA-19990128-00136 (Infosat Communications, Inc. STA).

[5] *See* 1996 Final Report of the World Telecommunications Policy Forum; AMSC Comments at 1.

[6] The Commission's proposed rule section 25.215 would expand the definition of (continued...)

However, assuming *arguendo* that the Commission determines that single-satellite systems should be considered GMPCS operators, it is essential that any new requirements take into consideration the capabilities of the existing regional MSS systems in North America. Hence, the Commission's proposed requirements for GMPCS operators are addressed below.

III. The GMPCS Type Certification Requirements Should Not Apply to Existing North American MSS Systems.

In order to facilitate the provision of GMPCS services across borders, and to ensure that the Commission's Part 25 requirements for those services in the United States are met, the Commission proposes to require terminals that enter the United States to have been type approved by a participating administration and to bear the ITU GMPCS-MoU Registry mark. The Commission also proposes that any terminals sold or leased in the United States for domestic use be type-certified by the FCC. Such a regime makes sense for the emerging global systems that have not yet rolled out service and that require the ability to serve their customers in numerous countries around the world.

However, in recognition of the fact that such type certification requirements may be unnecessary or unduly burdensome for existing operators, the Commission seeks comment on the possibility of "grandfathering" terminals that operate with existing systems.[7] TMI agrees with several commenters who say that a type certification requirement for terminals that operate with

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[6](...continued)
GMPCS operators to systems using "a constellation of *one or more* satellites." *NPRM*, Appendix A (emphasis added).

[7] *See NPRM* ¶ 24.

existing systems is not necessary,[8] and in any event would be too costly and difficult to implement. The Commission's grant of a blanket license ensures that terminals used in conjunction with an existing operator's service satisfy the technical requirements of Part 25 of the Commission's Rules, and hence have essentially met the same standards for "type certification."[9] Requiring such operators retroactively to obtain an additional certification and to affix a mark to all terminals would be duplicative and hinder, rather than facilitate, the existing services those operators provide.

Customers of existing North American MSS systems with grandfathered terminals should be able to use their terminals in all jurisdictions where those operators are authorized to provide service, without further type approval requirements.[10] Constellation correctly notes that the absence of an ITU GMPCS-MoU mark on a terminal "should not prohibit the transit of such

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[8] *See, e.g.*, Comsat Comments at 4; Constellation Comments at 3-4.

[9] In support of its position in favor of retaining a blanket licensing requirement for the provision of service in the United States, AMSC makes several spurious arguments regarding the service that TMI seeks authority to provide in its pending blanket earth station license application. While TMI does not disagree that the FCC should retain a blanket licensing requirement, many of AMSC's assertions regarding TMI's proposed service continue to be incorrect -- as TMI has demonstrated in its application proceeding, *see supra* note 4 -- and are in any event irrelevant to the instant proceeding.

[10] Comsat notes that it is not clear how customs officials will be able to identify grandfathered terminals if the Commission implements the proposed type certification regime for new GMPCS systems. *See* Comsat Comments at 6-8. However the new type certification system is administered, it is essential that grandfathered terminals associated with existing North American MSS systems be able to move freely across borders. The FCC should therefore take appropriate steps to ensure that customs officials are aware of the grandfathered status of those terminals.

equipment or the use of MSS terminals within the United States under the terms and conditions of a blanket license issued for that class of terminal in accordance with Part 25."[11]

IV. The Commission Should Relax Its Out-of-Band Emission Limit Proposals.

The Commission has proposed new, more stringent out-of-band emission limits to protect GPS and GLONASS in the event they are integrated into a Global Navigation Satellite System ("GNSS") in the coming years. TMI believes that there is no basis for enforcing the new standards on the schedule the Commission proposes; and while the proposed standards may be necessary in the future, the need for these new limits is currently speculative. TMI therefore agrees with commenters who request that the Commission allow for some flexibility in its proposed out-of-band emission standards.[12]

As the Commission itself recognizes, implementation of GLONASS may take much longer than expected,[13] and indeed may never occur as currently envisioned. The Commission should thus be prepared to relax the new standards or extend the deadlines based on operating experience, the further development of GPS receivers, and the extent to which GLONASS becomes integrated into a GNSS in the coming years.

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11 Constellation Comments at 8.

12 *See, e.g.*, Constellation Comments at 11-12; AMSC Comments at 14-15.

13 *See, e.g., NPRM* ¶ 73.

V. E911 and Position Location Requirements Should Not Be Extended to MSS Operators.

The majority of commenters assert, and TMI agrees, that enhanced 911 ("E911") and position location requirements should not be extended to MSS operators at this time.[14] The Commission determined in its 1996 *Enhanced 911 Order* that such a requirement, while appropriate on a phased-in basis for terrestrial CMRS, would "impede the development of [MSS] in ways that might reduce its ability to meet public safety needs."[15] As AMSC points out, there is currently no reason for the Commission to revisit this conclusion.[16] The technology and position location capabilities of the North American regional MSS systems, including TMI's system, have not changed since the Commission's *Enhanced 911 Order*. A requirement for industry-wide integration of GPS capability for the voice terminals that operate in conjunction with existing MSS satellites would require a substantial investment by manufacturers and the operators, as well as the wholesale replacement of existing customer terminals, which is simply unwarranted for this service.

In distinction to cellular and PCS, MSS has very limited market penetration and the vast majority of MSS customers are business users who do not acquire the terminals for public safety reasons (i.e., as a road-side insurance policy). Given the current scope of the MSS market and the large economic and technical costs that would be imposed on MSS systems, the Commission

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[14] *See, e.g.*, Iridium LLC Comments at 12-13; Motorola Comments at 18-19; Comsat Comments at 12-16; AMSC Comments at 16-17.

[15] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 18676, 18718 (1996).

[16] *See* AMSC Comments at 16-17.

should refrain from imposing E911 and position location requirements on existing MSS operators, or at the very least first generation regional MSS operators.

VI. Conclusion

The Commission should not expand the definition of GMPCS to include single-satellite systems such as TMI's that provide regional MSS. In the event the Commission does adopt a more expansive definition, though, it should ensure that terminals which existing regional MSS systems serve are grandfathered and not subject to the proposed type certification requirements. The Commission's proposed out-of-band emission standards should only apply if and when they are necessary to protect GPS and GLONASS as a fully integrated GNSS. Additionally, there is wide agreement among MSS operators that extension of E911 and related position location requirements to MSS would be technologically impractical and counterproductive at this time.

Respectfully submitted,

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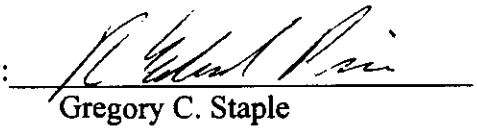
By: 

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July 21, 1999

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 1999, a true and correct copy of the foregoing Reply Comments of TMI Communications and Company, L.P. was served by first class mail, postage prepaid, upon all parties on the attached list.

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