

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20024

RECEIVED

JUL 27 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Request for Declaratory Ruling on)
Partial-Band Licensing of Earth)
Stations in the Fixed Satellite)
Service that Share Terrestrial Spectrum)
)
Petition for Rule Making of Set)
Loading standards for Earth)
Stations in the Fixed Satellite)
Service that Share Terrestrial Spectrum)

DOCKET FILE COPY ORIGINAL

RM No. 9649

**REPLY COMMENTS OF ATC TELEPORTS, INC.
ON REQUEST FOR DECLARATORY RULING
AND PETITION FOR RULEMAKING**

ATC Teleports, Inc. ("ATC Teleports"), through its attorneys, hereby submits its reply comments regarding the combined Request for Declaratory Ruling and Petition for Rulemaking ("Request" and "Petition") filed by the Fixed Wireless Communications Coalition ("FWCC" or "Coalition") on May 5, 1999.¹ ATC Teleports provides satellite teleport services to providers of voice, data, video and Internet communications services, both domestically and internationally. ATC Teleports is a licensee of both earth stations and microwave facilities and, consequently, has an understanding of the nature and requirements of both services.

ATC Teleports supports the oppositions filed by the Satellite Industry Association and other parties and urges the FCC to dismiss FWCC's Request and to deny the Petition. As discussed below, earth station operators need full-band earth station licensing to permit access to

No. of Copies rec'd 045
List A B C D E

multiple satellites and satellite transponders based on varying customer needs. Imposing earth station loading requirements would be unduly restrictive and would greatly increase the regulatory burdens associated with earth station licensing. Indeed, the existing microwave/Fixed-Satellite Service (“FSS”) coordination process works well and in no way favors earth station operators. ATC Teleports also agrees with commenters who suggest that, even if the Coalition continues to have concerns regarding coordination between the FSS and terrestrial fixed microwave services, an industry technical group is a more appropriate forum to consider the Coalition’s concerns than the FCC.

I. The Request Is Improper Because the Commission Does Not Undertake Major Changes in the Commission’s Rules via Declaratory Rulings.

The FWCC asks the FCC to impose a new set of obligations on FSS earth station operators through a declaratory ruling.² Specifically, the declaratory ruling would require each earth station operator to use only twice the amount of bandwidth for which the operator has demonstrated “actual need.”³ According to FWCC, an applicant could show “actual need” by certification of transponder usage, minutes of use, or services proposed.⁴ Any allocation of additional bandwidth would require the licensee to file a license modification application with the FCC and to coordinate with other users.

ATC Teleports agrees with GE American Communications, Inc. (“GE Americom”) and Corporate Satellite Communications, Inc. (“CSC”) that FWCC’s request for declaratory ruling is

¹ See *Public Notice*, Report No. 2334, released June 11, 1999.

² Petition at 8.

³ *Id.*

⁴ *Id.* For example, an earth station applicant might certify that it has contracts for sufficient transponder usage or that it has sufficient minutes of usage per day to need the allotted spectrum.

procedurally inappropriate because it does not ask the FCC to resolve uncertainty with respect to any existing rules, but rather to drastically change the way it regulates earth stations.⁵ The FCC's rules allow for a declaratory ruling only to remove uncertainty in the rules or to terminate a controversy.⁶ There is no such uncertainty in the current licensing process. In fact, FWCC seeks to have the Commission impose new affirmative requirements.⁷ Thus, there is no basis for issuing a declaratory ruling and FWCC's Request should be dismissed.

II. The Commission Should Deny FWCC's Petition for Rulemaking Because Its Proposals Are Not Compatible with the Technical Requirements of Satellite Earth Stations

The FWCC also petitions the FCC to amend Part 25 of the rules in a number of significant ways. First, FWCC demands that the FCC impose an unprecedented "loading requirement" on FSS earth station operators. Under the proposed rule, an earth station licensee would be required to certify within 30 months after issuance of an initial license, major modification or renewal that its facility was "loaded to 50% of its licensed bandwidth."⁸ If the earth station operator could not certify that it had met this loading requirement, the licensee would be required to reduce the range of operating frequency to no more than twice the "actual load" and to disseminate notice to the public of this change.⁹ Second, FWCC asks the FCC to

⁵ Comments of Corporate Satellite Communications at 1; Opposition of GE Americom at 4.

⁶ 47 C.F.R. § 1.2; *see Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 599 (D.C. Cir. 1973) ("If indeed the FCC were proposing a new duty on its licensee, its action should be subject to the public debate and scrutiny of a rulemaking proceeding.").

⁷ For example, if the earth station licensee subsequently needs more than the allotted bandwidth, the FWCC proposal would require the licensee to modify its license and coordinate with the then-current microwave users, which is not the case under the current rules.

⁸ Petition at 10.

⁹ *Id.*

supplant existing informal coordination procedures with a complex set of interference standards that the FCC would then be required to enforce.¹⁰

FWCC attempts to justify this proposal by claiming that FSS and terrestrial microwave should not be subject to different rules.¹¹ This explanation does not merit any changes to the current rules. As the Satellite Industry Association (“SIA”) explains, a mere difference in regulatory treatment between two undeniably different and diverse services cannot justify a rule change.¹² While terrestrial networks generally connect two discrete points that are separated by relatively short distances using specific frequencies, satellite networks can cover entire hemispheres and a wide range of communication services in various frequency bands depending on the satellite and transponder accessed.¹³ Microwave operations are frequency-specific and the restoration of outages does not entail the use of new spectrum. As GE Americom observes, earth station operations require the full range of available frequencies to respond to changes in customer requirements, to access transponders on various frequencies, and to restore capacity in the event of outages. Thus, the technical and operational differences between the services fully explain the differences in regulatory treatment between FSS earth stations and terrestrial fixed microwave stations.

Satellite operators and the FCC require sufficient flexibility to permit an earth station to communicate not only with a variety of in-orbit spacecraft, but also on different channels,

¹⁰ *Id.*

¹¹ Petition at 9.

¹² Opposition of SIA at 2.

¹³ Indeed, the same factors that permit satellites to provide such extensive coverage limit the ability of satellite operators to achieve the same bits per second per Hertz that terrestrial operators can achieve. *Id.*

depending on available transponder capacity. Teleport operators such as ATC Teleports need full-bandwidth allocations and substantial flexibility to reach all of the many satellites with which it communicates. Licensing only a portion of the available bandwidth would seriously hamper the ability of teleport operators to respond to their customers' needs. Such a limitation could cripple the teleport industry.¹⁴

ATC Teleports' operations rely on satellite uplink facilities using multiple antennas to communicate with a changing mix of satellites. ATC Teleports constantly repoints its antennas to communicate on different frequencies and with different satellites, in response to customer requests.¹⁵ The current rules allow ATC Teleports to serve the constantly varying needs of its customers. Moreover, as Comsat points out, the FCC's earth station rules are flexible because they must accommodate changes in the international and domestic communications satellite environment, including interference potential from new adjacent satellites, changes in transponder frequency plans and replacement satellite transitions.¹⁶ In contrast, microwave links do not typically operate across multiple frequency bands, and do not have to change the frequencies they use on a regular basis.

Each earth station must have the ability to switch from one channel to another based on the transponder availability on the satellite to which it desires to transmit at a given time.¹⁷ If

¹⁴ The Galaxy 4 satellite failure exemplifies the need for flexibly licensed earth stations. If thousands of C-band earth stations could not have quickly repointed and tuned to new frequencies, restoring service to hundreds of thousands of customers would have required even longer.

¹⁵ This is true of other carriers as well. See Opposition of Williams Communications Systems at 1.

¹⁶ Opposition of COMSAT at 13-14.

¹⁷ See e.g. Comments of McKibben Communications Corp. at 2.

the FCC were to adopt the FWCC's proposal, teleport operators would no longer possess the ability to communicate immediately with any satellite at any frequency specified at any time.

Microwave operations, however, are frequency-specific and the restoration of outages does not entail the use of new spectrum. ATC Teleports agrees with GE Americom's observation that the proposed rules requested by the Coalition would severely restrict the ability of earth station operators to meet customer demands and greatly increase the administrative burden of earth station licensing and coordination.¹⁸

ATC Teleports also opposes the Coalition's proposed coordination rule which would prohibit an FSS earth station that accepts terrestrial microwave interference from denying similar interference rights to subsequent microwave operators. Williams notes that such a requirement might cause earth station operators to cease granting waivers to *any* microwave applicants.¹⁹ Indeed, Home Box Office ("HBO") argues that this approach must be rejected because it is not possible to predict the effects of interference from multiple sources.²⁰ The factors ignored by the proposed rule include the potential adverse impact of adjacent band interference and the variance of attenuation by frequency.²¹ In addition, where an earth station operator relies on berms or buildings to provide shielding against interference, the proposed rule improperly assumes that the level of attenuation is constant over the azimuth. Obviously, in such cases it is imprudent to assume that interference from other angles would be blocked.

¹⁸ Opposition of GE Americom at 10-13.

¹⁹ Opposition of Williams at 3.

²⁰ Opposition of HBO at 6.

²¹ Comments of Skybridge at 5-6.

ATC Teleports opposes the proposed loading requirements because they are not appropriate for satellite earth stations.²² Unlike terrestrial operators, who can design, deploy and operate their systems as needed, satellite operators must design their systems years in advance of the anticipated need and often commence service in phases. Moreover, loading requirements are not clearly applicable in the context of spread-spectrum systems, which dynamically use the entire band. Finally, loading requirements based on transponder usage, minutes per day, or services proposed would harm new service providers who have not established a record of consumer demand.

III. The Commission Should Allow an Industry Forum to Examine the Coordination Issues Raised by the Petitioners

ATC Teleports concurs with commenters who suggest that the Coalition's concerns with respect to coordination are more appropriately addressed within a technical industry forum, such as the National Spectrum Manager's Association ("NSMA"), because microwave/FSS prior coordination is an industry activity. An industry forum is much better suited to addressing the complex issues raised by the FWCC's proposals and to finding an appropriate "win-win" solutions to such concerns.

For this reason, ATC Teleports opposes Sprint's suggestion that the FCC should initiate a Notice of Inquiry to solicit more extensive public comments on whether a problem exists with terrestrial microwave coordination.²³ ATC Teleports believes that an appropriate industry forum would be in a better position to examine the issues raised both by the Coalition and by the earth station operators opposing its request.

²² Comments of Skybridge at 7-9.

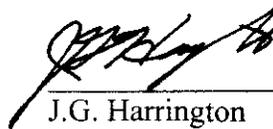
IV. Conclusion

The Commission should dismiss FWCC's Request for Declaratory Ruling as procedurally inappropriate because the FWCC does not request clarification of existing FCC rules, but rather seeks to impose drastic new requirements on earth station operations that would restrict an earth station's accessible bandwidth.

The Commission also should deny the Petition for Rulemaking on the grounds that the petition is not compatible with the needs of earth station operations. FWCC concerns with respect to microwave/FSS coordination are more appropriately addressed in an industry forum. The FWCC's proposal would limit the growth of the satellite industry, increase the costs of telecommunications and reduce the benefits of frequency coordination between earth stations and terrestrial microwave users.

Respectfully submitted,

ATC TELEPORTS, INC.



J.G. Harrington
Loretta J. Garcia
Trey Hanbury

Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Tel.: (202) 776-2000
Fax: (202) 776-2222

Its Attorneys

July 27, 1999

²³ Sprint Opposition at 4-5.

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, do hereby certify that on this 27th day of July, 1999, I caused a copy of the foregoing Reply Comments of ATC Teleports to be served upon each of the parties listed below:

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Commissioner Harold Furchgott-Roth
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Commissioner Michael K. Powell
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Commissioner Susan P. Ness
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Donald Abelson, Chief
International Bureau
Federal Communications Commission
445 12th Street, SW,
Washington, DC 20554

Roderick K. Porter, Deputy Chief
International Bureau
Federal Communications Commission
445 12th Street, SW,
Washington, DC 20554

Thomas S. Tycz, Chief
Satellite & Radiocommunication Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-C235
Washington, DC 20554

ITS
1231 20th Street, NW
Washington, DC 20037

Jack Keating, President
Assoc. of Public Safety Communications
Officials International, Inc.
c/o 1666 K Street, NW, #1100
Washington, DC 20006

Jack Keating,
Association of Public Safety
Communications
Officials-International, Inc.
c/o 1666 K Street, NW, #1100
Washington, DC 20006

Benjamin J. Griffin
Attorney for Home Box Office
Mintz, Levin, Cohn, Ferris, Clovsky
and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004

Patricia Mahoney
Clayton Mowry
The Satellite Industry Association
225 Reinekers Lane, Suite 600
Alexandria, VA 22314

Phillip L. Spector
Jeffrey H. Olson
Dine C. Gaylor
Attorneys for Skybridge L.L.C.
Paul Weiss, Rifkind, Wharton & Garrison
1615 L Street, NW, Suite 1300
Washington, DC 20036

Peter A. Rohrbach
Karis A. Hastings
Yaron Dori
Attorneys for GE American
Communications, Inc.
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004

Patricia A. Mahoney
Iridium LLC
1575 Eye Street, NW
Suite 800
Washington, DC 20005

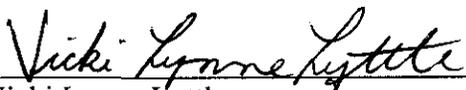
W. Mark McKibben
McKibben Communications
20640 Bahama Street
Chatsworth, CA 91311

Benjamin J. Griffin
A. Sheba Chacko
Attorneys for Williams
Communications, Inc.
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004

Robert A. Mansbach
Attorney for Comsat Corporation
6560 Rock Spring Drive
Bethesda, MD 20817

Leon M. Kestenbaum
Jay C. Keithley
Marybeth M. Banks
Sprint Corporation
1850 M Street, NW, 11th Floor
Washington, DC 20036

Dr. Thomas Brackey
Dan Bart
Gerald Rosenblatt
Satellite Communications Division of the
Telecommunications Industry Association
2500 Wilson Boulevard, Suite 300
Arlington, VA 22201


Vicki Lynne Lyttle