

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition for Rulemaking)
To Amend Eligibility Requirements in Part 78)
Regarding 12 GHz Cable Television)
Relay Service)

CS Docket No. 99-250
RM No. 9257

REPLY COMMENTS OF SKYBRIDGE L.L.C.

SkyBridge L.L.C. ("SkyBridge"), by its attorneys, hereby replies to comments^{1/} filed in response to the above-captioned Notice of Proposed Rulemaking (the "NPRM")^{2/} proposing an expansion of the permitted terrestrial users of frequencies in the 12.7-13.2 GHz band ("12 GHz band") to include private cable operators ("PCOs") and other multichannel video programming distributors ("MVPDs"), for the delivery of video programming.^{3/} SkyBridge is an applicant

^{1/} See Comments of the Wireless Communications Association International, Inc. ("WCAI Comments"); Comments of Sprint Corporation ("Sprint Comments"); Comments of EchoStar Satellite Corporation ("EchoStar Comments"); Comments of KaStar Satellite Communications Corp., KaStarCom, World Satellite, LLC and @Contact, LLC ("KaStar Comments"); Comments of OpTel, Inc. ("OpTel Comments"); Comments of RCN Telecom Services, Inc. ("RCN Comments"); Comments of Comsearch ("Comsearch Comments"); Comments of the National Cable Television Association ("NCTA Comments"); Comments of Time Warner Cable ("Time Warner Comments"); Comments of the National Association of Broadcasters ("NAB Comments"); Comments of the Society of Broadcast Engineers, Inc. ("SBE Comments"); Comments of the Walt Disney Company, Inc. ("Disney Comments"); all filed August 16, 1999.

^{2/} FCC 99-166, released July 14, 1999.

^{3/} The 12.7-13.25 GHz band is currently available to licensees in the Cable Television Relay Service ("CARS"). The NPRM stems from the Petition for

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before the Commission for authority to launch and operate a non-geostationary orbit ("NGSO") Fixed Satellite Service ("FSS") system in the Ku-band (the "SkyBridge System"), including the subject 12 GHz band.^{4/}

As SkyBridge stated in its comments on the NPRM, SkyBridge has long supported equitable sharing among terrestrial and satellite operators in the Ku-band, and has proposed a comprehensive regulatory regime that will protect terrestrial operations and expansion, without imposing unnecessary burdens on NGSO FSS systems.^{5/} In particular, SkyBridge has not objected to expanding CARS eligibility as proposed by OpTel, so long any additional permitted terrestrial links are subject to the standard coordination procedures used to coordinate terrestrial facilities and satellite earth stations.^{6/} SkyBridge has cautioned the Commission, however, against

^{3/} (...continued)
 Rulemaking of OpTel, Inc., filed April 1, 1998 ("OpTel Petition"), proposing to expand the class of point-to-point users of the band to include Private Operational Fixed Point-to-Point Microwave Service ("OFS"), for use for the "final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems, or master antenna TV systems." OpTel Petition at 1. As noted in the NPRM, OpTel proposes to use the 12 GHz band for coordinated point-to-point ("hub-to-hub") links, and not for uncoordinated multipoint distribution. NPRM at 1, 4. The Commission, on its own motion, broadened the NPRM "to include consideration of the expanded use of the 12 GHz CARS band by other MVPDs," Id. at 2, and sought comment on the drawbacks of expanding CARS eligibility. Id. at 3.

^{4/} See File Nos. 48-SAT-P/LA-97; 89-SAT-AMEND-97; SAT-AMD-19980630-00056; SAT-AMD-19990108-00004.

^{5/} Comments of SkyBridge L.L.C., filed August 16, 1999 ("SkyBridge Comments").

^{6/} The Commission clarified in the NPRM that by "point-to-multipoint," it means "a service in which one or more transmitters at a hub distribute signals to multiple receiver sites, as specified in the CARS authorization. As used in
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expanding the terrestrial users of this band to include dissimilar terrestrial operations, such as point-to-multipoint distribution systems (i.e., transmissions to multiple, uncoordinated receiving locations), or use of wide-beam antennas, or to introduce different licensing regimes, such as area-wide licensing.^{7/} Such changes would significantly alter the sharing environment in the band, adversely affecting both satellite and current FS users alike.

Several commenters, however, proposed changes to the rules governing the 12 GHz band that would go far beyond the original proposal of OpTel. These proposals, if adopted, would radically change the use of the band, to the detriment of current users and applicants.

For example, EchoStar Satellite Corporation ("EchoStar") proposes that the Commission extend eligibility to the 12 GHz band to include all MVPD operators, including DBS downlinks, and award licenses by auction.^{8/} In contrast to other proposed uses of the band by satellite systems,^{9/} EchoStar's proposal would largely

^{6/} (...continued)
this Notice, the term does not include transmissions to multiple, unspecified receiving locations." NPRM at 2, n.8 (emphasis added). Such clarification should be incorporated in any rules adopted for this band. See also NCTA Comments at 5 (arguing that any use of the 12 GHz band by PCOs should be limited to hub-to-hub operations).

^{7/} See, e.g., SkyBridge Comments at 3.

^{8/} EchoStar Comments at 2-3. SkyBridge agrees with the numerous commenters that pointed out the inappropriateness of auctions for awarding licenses for terrestrial point-to-point and satellite services in the band. See OpTel Comments at 8; RCN Comments at 12; Comsearch Comments at 8; WCAI Comments at 2, n.3; Sprint Comments at 5.

^{9/} For example, the non-ubiquitous gateway operations proposed by SkyBridge will not have such adverse consequences for incumbent terrestrial users,
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preempt inter-service sharing in the band. As EchoStar admits, ubiquitous satellite services in the band would preclude the current terrestrial uses of the band,^{9/} in direct contradiction to the intent of the NPRM.

In addition, EchoStar suggests that the 12 GHz band may be an appropriate home for the Northpoint system.^{11/} Northpoint currently proposes to operate terrestrial point-to-multipoint networks in the 12.2-12.7 GHz band employed by EchoStar.^{12/} Again, however, such a change would have drastic consequences for current and proposed users of the band. Northpoint's terrestrial point-to-multipoint system is precisely the kind of expansion of CARS eligibility SkyBridge cautioned the Commission against in its comments. Northpoint's wide beam antennas would significantly impede coordination of terrestrial stations and satellite earth stations in the Northpoint service areas. To achieve the goals of increased terrestrial use of the band, the Commission must require that all new links be coordinated, point-to-point links.

KaStar Satellite Communications Corp. and its affiliated companies ("KaStar") propose that the Commission move all private cable operators currently

^{9/} (...continued)
because these operations have been designed to co-exist with current and future FS stations in the band.

^{10/} EchoStar Comments at 3.

^{11/} Id. at 3-4.

^{12/} The numerous problems inherent in Northpoint's proposed use of the 12.2-12.7 GHz band have been well-documented by NGSO FSS and DBS operators in several proceedings before the Commission. See, e.g., Comments of SkyBridge L.L.C., ET Docket No. 98-206, filed March 2, 1999, at 109; Reply Comments of SkyBridge L.L.C., ET Docket No. 98-206, filed April 14, 1999, at 90.

using the 18.55-18.58 GHz band and all FS terrestrial operators currently using the 18.6-18.82 GHz bands (collectively referred to herein as the "18 GHz band") to the 12 GHz band, so that the 18 GHz band can be cleared for blanket licensing of FSS earth station.^{13/} While SkyBridge has not opposed increased terrestrial use of the 12 GHz band for certain private cable operations, KaStar's proposal to actually *relocate* private cable operators, as well as other terrestrial users, from the 18 GHz band, and make the 12 GHz band a dumping ground for Ka-band terrestrial operations, again goes far beyond the scope of the Commission's proposals.^{14/} Foreclosing use of the 18 GHz band to all terrestrial users would defeat the purpose of relaxing the eligibility requirements for certain terrestrial users of the 12 GHz band, and would not further the Commission's goals of increased spectrum efficiency.

For a similar reason, the proposal of the Wireless Communications Association International, Inc. ("WCAI") and Sprint Corporation ("Sprint") to permit use of the 12 GHz band for non-video (i.e., voice and data) backbone distribution must be carefully considered.^{15/} While permitting a channel or two to be used for such purposes on an ancillary basis would not materially change the use of the

^{13/} KaStar Comments at 2, 5.

^{14/} As noted by Comsearch, making private cable operators eligible to use the 12 GHz band may well in itself lead to a spurt of licensing activity in this band. Comsearch Comments at 6. Opening up the band to other terrestrial uses, and requiring relocation of terrestrial operations to the 12 GHz band, could lead to intractable congestion in this already heavily used band.

^{15/} WCAI Comments at 2, 6; Sprint Comments at 6-7. SkyBridge supports the position of the WCAI that the Commission should not permit the use of the 12 GHz band for the distribution of video programming directly to subscriber premises. WCAI at 1-2; 9. Such use would deprive current users of the band the spectrum required for point-to-point backbone facilities.

band,^{16/} permitting large scale two-way interactive services in the band would dramatically change the sharing environment, affecting both current terrestrial and satellite users of the band.

For the above reasons, should the Commission decide to expand the permitted uses of the 12 GHz band for MVPD operations, SkyBridge urges the Commission to adhere to the limited request of OpTel, and include in any expansion only individually coordinated terrestrial point-to-point links.

Respectfully submitted,

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^{16/} For example, RCN Telecom Services, Inc. suggests that permitting voice and data over a single 6 MHz channel would provide sufficient bandwidth for most applications, while ensuring that the basic character of the CARS spectrum is preserved. RCN Comments at 16.