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September 27, 1999

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VIA HAND DELIVERY

EX PARTE OR LATE FILED

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

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SEP 27 1999

COMMUNICATIONS SECTION

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; SES-LIC-19990318-00435

Dear Ms. Salas:

Based on our recent meetings with Commission staff, we understand that there are two key misconceptions that may be clouding the deliberations concerning the above-referenced applications to use TMI's space segment to operate earth stations in the United States in frequencies licensed to AMSC. These involve (i) whether the dismissal of the applications would constitute a suspect *quid pro quo* in violation of the U.S. commitment under the WTO Basic Telecom Agreement to open its market and (ii) whether, in light of its license having been granted "subject to international frequency coordination," AMSC continues to have due process rights with respect to the Commission's authorizing the use of additional satellite systems that operate on the same frequencies as those the Commission has already licensed AMSC to use.

Quid pro quo. Whatever impact the dismissal of the applications may have on the international frequency coordination process is irrelevant. Because the applicants propose to operate in frequencies licensed to AMSC, the applications are inconsistent with existing U.S. spectrum management policy, which seeks to provide access to at least 10 MHz for the already-licensed system. This has been U.S. policy since 1987, and it was reaffirmed in the 1996 *Lower L-band NPRM*. In 1996, the Commission proposed to apply this policy to domestic entities that want to use AMSC's frequencies. It now must apply this policy without discrimination to foreign entities that seek the same kind of authority. To do otherwise will only undercut the integrity of U.S. spectrum management decisions, with the result that in the future operators of satellite systems and other communications facilities that want to operate in the United States will have an incentive to bypass U.S. domestic processes in favor of foreign licensing.

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TMI contends that it has coordinated this spectrum for use in the U.S., but this is simply untrue. There is no agreement among the North American MSS operators in the L-band that provides TMI with any access to spectrum beyond December 1999. Moreover, the U.S. position has always been that at least until AMSC gets its 10 MHz, the frequencies that other systems use pursuant to the annual operators agreement are not for service in the United States, since such use has not been authorized and would only make the negotiations more difficult.

“Subject to international frequency coordination.” When the Commission authorizes the operation of a communications system that requires international frequency coordination, it is understood that the coordination process may require administrations to compromise in a way that will affect the scope of the U.S. licensee’s authorized operations. To that extent, this condition simply provides licensees with fair notice of an obvious reality.

The context of any such coordination compromise, however, is a critical factor in determining its validity. If the foreign-licensed system is seeking to operate only outside the Commission’s licensing jurisdiction (*i.e.*, outside the United States), then it presents a different case than here, where the foreign-licensed system is simultaneously seeking to coordinate its system and to gain authority to operate in the United States on the very frequencies that have been licensed to the incumbent. The Commission cannot agree to a coordination compromise that has the effect of granting authority to a new licensee by taking spectrum from an incumbent licensee. For instance, Commission-licensed cellular systems near the Canadian border had reason to know that they might not get access to as much spectrum as U.S. cellular systems that did not face coordination with co-channel Canadian systems, but in that case the Canadian cellular systems on the other side of the border were not seeking authority to operate anywhere but in Canada. In that case, the Commission clearly would not have been permitted to use the coordination process as an opportunity to authorize the Canadian cellular systems to provide service in the United States on those same frequencies. Just because the U.S. systems’ licenses were issued “subject to international frequency coordination” did not permit the Commission to use the coordination process to effectively grant Windsor cellular systems authority to operate in Detroit. Yet, that is precisely what TMI is trying to do here, using the coordination process as a lever to pry open the U.S. market in a way that is wholly inconsistent with U.S. spectrum management policy. If TMI were a domestic entity seeking authority to operate a satellite system in the U.S. in AMSC’s frequencies, the application would not even have been put on public notice.

Again, if the Commission provides such preferential treatment to foreign-licensed entities such as TMI, it will create an incentive for other potential operators to bypass the FCC’s licensing processes in favor of foreign licensing and entry into the U.S. through the coordination process, to the prejudice of incumbent licensees and the integrity of the spectrum management policies that led to the incumbents’ licensing.

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If you have any questions concerning these issues, please contact the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lon C. Levin". The signature is fluid and cursive, with a prominent initial "L" and a long, sweeping underline.

Lon C. Levin

cc: Kathy Brown
Robert Calaff
Ari Fitzgerald
Jennifer Gilsenan
Linda Haller
Fern Jarmulnek
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