

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED
FEB 17 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Establishment of Policies and Service Rules) IB Docket No. 99-81
for the Mobile Satellite Service in the 2 GHz Band) RM-9328
) DA 00-222

COMMENTS OF CELSAT AMERICA, INC.

Celsat America, Inc. ("Celsat"), by undersigned counsel, hereby submits the following comments on the Commission's Public Notice, released February 7, 2000, in which the International Bureau seeks further comment on selected issues regarding authorization of 2 GHz mobile satellite service ("MSS") systems.¹ Celsat is one of the applicants seeking to provide MSS in the 2 GHz band and files these comments in support of the Commission's proposed hybrid method of allocating spectrum.

I. CELSAT SUPPORTS THE COMMISSION'S HYBRID APPROACH TO LICENSING 2 GHZ MSS APPLICANTS WITH ONE APPROPRIATE MODIFICATION WHICH IS DESIGNED TO EXPEDITE SERVICE TO THE PUBLIC

As explained in the Public Notice, the Commission's proposed hybrid approach to assigning spectrum in the 2 GHz band to MSS providers takes elements

¹ See *International Bureau Requests Further Comment on Selected Issues Regarding Authorization of 2 GHz MSS Systems*, Public Notice DA 00-222 (2000).

No. of Copies rec'd 074
List A B C D E

from the "traditional band plan" and the "negotiated entry" approaches to assigning spectrum as described in the Commission's notice of proposed rulemaking (the "NPRM") in this proceeding.² Specifically, the Commission would subdivide the 2 GHz uplink and downlink into distinct segments of equal bandwidth based upon the number of applicants participating in the 2 GHz proceeding. As of the date of these comments, it appears there are only eight remaining applicants seeking to provide MSS at 2 GHz.³ Thus, each of the 2 GHz applicants would be allocated 4.375 MHz of spectrum in the uplink and the downlink.

As set forth in the Public Notice, each operator would be permitted to select its "home" assignment of 4.375 MHz from the then-available spectrum once its first satellite reaches its intended orbit. Celsat supports this market-based incentive as an excellent way for the Commission to permit the 2 GHz applicants to choose their preferred "home" assignment of 4.375 MHz.

² See *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, 14 FCC Rcd 4843 (1999).

³ In a letter to Thomas Tycz dated January 28, 2000, Inmarsat indicated that it is abandoning Project Horizons ("the Board has reviewed the specific business case of Project Horizons, which it feels is not appropriate to pursue at this time"). Project Horizons formed the basis of Inmarsat's 2 GHz application. This same letter includes the contradictory statement that "Inmarsat remains interested in participating in the Commission's 2 GHz processing round." Under the Commission's rules (e.g., 47 C.F.R. § 25.116), however, Inmarsat cannot abandon the satellite project proposed in its existing application and still participate in the 2 GHz processing round.

The Commission also intends to permit MSS operators to provide service anywhere in the 2 GHz MSS spectrum, subject to coordination among systems. The Commission notes that this proposal is similar to the "negotiated entry" approach to assigning spectrum discussed in the NPRM. The Commission proposes to permit operators to use spectrum outside their "home" assignment only on a secondary basis and would cap the use of the 2 GHz spectrum at 4.375 MHz regardless of where it is used. The Commission apparently adopted this ingenious proposal in order to address the concerns of many of the commenters in the 2 GHz proceeding -- that under the negotiated entry approach the first company to use the 2 GHz band might be unwilling to relinquish its use of the 2 GHz spectrum when subsequent entrants desire to commence service.⁴ Celsat dubbed this the problem of "squatter's rights."⁵

In Celsat's view, the Commission's proposal to permit applicants to use spectrum outside of their "home" assignment only on a secondary basis substan-

⁴ Indeed, in light of the fact Craig McCaw (who also backs the Teledesic project) appears poised to acquire ICO and, according to press reports, will also be acquiring yet another 2 GHz applicant, Iridium, the Commission should be in a heightened state of alert regarding the ability of 2 GHz applicants to negotiate fairly with one another. Moreover, if Mr. McCaw acquires both ICO and Iridium, the public interest would best be served by limiting Mr. McCaw's (and his affiliates') acquisition of 2 GHz spectrum to the same amount any single entity can acquire (whether that be 4.375 MHz or some other amount). This is the best way to ensure competition in the provision of mobile satellite services, which surely serves the public interest.

⁵ See *Reply Comments of Celsat America, Inc.*, filed July 26, 1999, at 13 (*"Reply Comments of Celsat"*).

tially ameliorates the "squatter's rights" problem.⁶ In fact, so long as the Commission makes it perfectly clear that an operator's use of spectrum outside of its "home" assignment is permitted only on a secondary basis, Celsat urges the Commission to permit each operator to use both its "home" assignment and an additional block of spectrum equal in size to its home assignment. In other words, each operator should be permitted to use its home assignment and an additional 4.375 MHz block of spectrum outside of its home assignment on a secondary basis. The reason to adopt this proposal is quite simple: many of the proposed MSS systems in the 2 GHz band will never be launched and substantial portions of the 2 GHz band could lie fallow if the Commission reserves too much spectrum for what could be nothing more than paper satellites. Under Celsat's proposed approach, as soon as at least two systems are launched, approximately one half of the available spectrum at 2 GHz will be fully utilized and the public will gain access to these much needed services.

⁶ Moreover, this approach also has the benefit of facilitating sharing of the 2 GHz band between incumbent operators and the new MSS providers. Specifically, the earliest MSS entrants into the 2 GHz band can choose to operate in those portions of the 2 GHz band where sharing of the spectrum is most easily accomplished (e.g., between the BAS channels) while reserving the right to use another portion of the band for their permanent "home" assignment.

II. THE COMMISSION SHOULD REWARD THOSE COMPANIES PROVIDING SERVICE TO RURAL AREAS BY GRANTING THEM PREFERENTIAL ACCESS TO UNUSED SPECTRUM

As Celsat emphasized in both its comments and reply comments in this proceeding, the Commission should adopt rules that reward service to rural areas. The Commission made clear in the NPRM that it is committed to "encouraging delivery of telecommunications services, including satellite services, to unserved and high-cost communities seeking to develop cost-effective incentives for such services."⁷ Satellites are an excellent means of addressing this concern and, in light of the extremely affordable nature of the Celsat service, licensing the Celsat system may very likely be the best means for the Commission to accomplish its goal of providing affordable service to rural areas, including tribal lands.⁸ One very good way to reward service to rural areas is to reassign unused spectrum to those companies that can demonstrate they are providing service to rural areas. Celsat set forth a detailed means of allocating unused spectrum in its comments and reply comments.⁹ If the Commission adopts Celsat's proposals concerning allocating unused spectrum, those companies providing service to rural areas will be rewarded for their commit-

⁷ NPRM at ¶ 95.

⁸ *See Comments of Celsat America, Inc.* in WT Docket No. 99-266 (Extending Wireless Telecommunications Services to Tribal Lands), filed November 9, 1999.

⁹ *See Comments of Celsat America, Inc.*, filed June 24, 1999, at 9-10; *Reply Comments of Celsat* at 11-12.

ment to serving those who are often neglected and the 2 GHz spectrum will be put to its best possible use.

III. THE COMMISSION'S PARAMOUNT GOAL SHOULD BE THE SPEEDY IMPLEMENTATION OF 2 GHZ MSS SERVICE

Countless people across the United States are in great need of the many benefits of the Celsat system right now. The sooner the Commission grants Celsat a license to provide that service, the sooner that need will be met. Accordingly, Celsat urges the Commission to dispense with requiring 2 GHz applicants to amend their applications to conform to the 2 GHz band plan once the service rules and band plan are released. The Commission would hasten the delivery of service to the public if it simply follows the approach it took in the first round of the Ka-band and issues licenses to the 2 GHz applicants concurrently with the release of the band plan and service rules. It could then require applicants to submit letters in lieu of amended applications in which they agree to fully comply with the terms of their licenses and the service rules.

IV. CONCLUSION

Celsat commends the International Bureau staff for crafting a solution to the difficult challenges facing the 2 GHz MSS proceeding and urges the Commission to adopt the hybrid proposal as modified by Celsat herein as expeditiously as possible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian D. Weimer", written over a horizontal line.

Antoinette Cook Bush
John C. Quale
Brian D. Weimer
Skadden, Arps, Slate, Meagher & Flom
LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111
202-371-7000

Attorneys for Celsat America, Inc.

Dated: February 17, 2000

CERTIFICATE OF SERVICE

I, Ava Smith, hereby certify that on this 17th day of February, 2000, I caused copies of the foregoing "Comments of Celsat America, Inc." to be served by U.S. Mail or by hand delivery (*) on the following parties:

Chairman William Kennard*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-B201
Washington, DC 20554
Phone: (202) 418-1000

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-A302
Washington, DC 20554
Phone: (202) 418-2000

Commissioner Michael K. Powell*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-A204
Washington, DC 20554
Phone: (202) 418-2200

Commissioner Susan Ness*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-B115
Washington, DC 20554
Phone: (202) 418-2100

Commissioner Gloria Tristani*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-C302
Washington, DC 20554
Phone: (202) 418-2300

Ari Fitzgerald, Esq.
Senior Legal Advisor
Office of Chairman Kennard
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-B201
Washington, DC 20554
Phone: (202) 418-1000

Bryan Tramont, Esq.
Senior Legal Advisor
Office of Commissioner Furchtgott-Roth*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-A302
Washington, DC 20554
Phone: (202) 418-2000

Peter Tenhula, Esq.
Senior Legal Advisor
Office of Commissioner Powell*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-A204
Washington, DC 20554
Phone: (202) 418-2200

Mark Schneider, Esq.
Senior Legal Advisor
Office of Commissioner Ness*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-B115
Washington, DC 20554
Phone: (202) 418-2100

Alexander Roytblat*
International Bureau - Satellite &
Radiocommunication Division
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 6-A623
Washington, DC 20554
Phone: (202) 418-7501

Karl A. Kensinger*
International Bureau - Satellite &
Radiocommunication Division
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 6-A663
Washington, DC 20554
Phone: (202) 418-0773

Thomas S. Tycz, Chief*
International Bureau - Satellite &
Radiocommunication Division
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 6-A665
Washington, DC 20554
Phone: (202) 418-0735

Julius Knapp
Office of Engineering and Technology
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 7-B133
Washington, DC 20554
Phone: (202) 418-2468

Adam Krinsky, Esq.
Senior Legal Advisor
Office of Commissioner Tristani*
Federal Communications Commission
The Portals II
445 12th Street, SW, Suite 8-C302
Washington, DC 20554
Phone: (202) 418-2300

Chris Murphy*
International Bureau - Satellite &
Radiocommunication Division
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 6-C437
Washington, DC 20554
Phone: (202) 418-2373

Linda Haller*
International Bureau - Satellite &
Radiocommunication Division
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 6-C747
Washington, DC 20554
Phone: (202) 418-1408

Sean White
Office of Engineering and Technology
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 7-A124
Washington, DC 20554
Phone: (202) 418-2453

Geraldine Matisse
Office of Engineering and Technology
Federal Communications Commission
The Portals II
445 12th Street, SW, Rm. 7-A123
Washington, DC 20554
Phone: (202) 418-2322

Howard Griboff*
International Bureau - Satellite &
Radiocommunication Division
Federal Communications Division
The Portals II
445 12th Street, SW, Rm. 6-C467
Washington, DC 20554
Phone: (202) 418-0657

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins L.L.P.
1455 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: (202) 639-6755
Fax: (202) 639-6604
Counsel to Constellation
Communications, Inc.

Patricia A. Mahoney, Esq.
IRIDIUM LLC
1575 Eye Street, NW, Suite 500
Washington, DC 20005
Phone: (202) 326-5795
Fax: (202) 408-3801

Gregory Stuple
Peter Connolly
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, NW
Suite 1000
Washington, DC 20046
Phone: (202) 467-5700
Fax: (202) 467-5915
Counsel to TMI Communications
and Company, L.P.

William D. Wallace, Esq.
Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Phone: (202) 624-2807
Fax: (202) 628-5116
Counsel to GlobalStar, L.P.

Cheryl A. Tritt
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20036
Phone: (202) 887-1500
Counsel to ICO Global Communications

Kelly Cameron
Powell, Goldstein, Frazer & Murphy
1001 Pennsylvania Avenue, NW
Sixth Floor
Washington, DC 20004
Counsel to Inmarsat

Herbert E. Marks
David A. Nall
Bruce A. Olcott
Benigno E. Bartolome
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, NW
Washington, DC 2004
Phone: (202) 626-6600
Counsel to The Boeing Company

Eric T. Werner
Verner, Liipfert, Bernhard,
McPherson, and Hand, Chartered
901 - 15th Street, NW, Suite 700
Washington, DC 20005
Phone: (202) 371-6000
Counsel to Iridium LLC

Tom Davidson, Esq.
Phil Marchesiello, Esq.
Akin, Gump, Strauss, Hauer &
Feld, L.L.P.
1333 New Hampshire Avenue, NW
Suite 400
Washington, DC 20036
Phone: (202) 887-4000
Counsel to Mobile Communications
Holdings, Inc.

Mark Grannis
Harris, Wiltshire & Grannis
1200-18th Street, N.W.
Washington, DC 20036



Ava Smith