

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

Petition for Rulemaking)
Regarding Coordination of)
Interference between the C-Band)
Geostationary Satellites and)
Point-to-Point Microwave Systems)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

OPPOSITION OF HOME BOX OFFICE

Home Box Office ("HBO"), a Division of Time Warner Entertainment Company, L.P., by its attorneys, hereby submits its opposition to the petition for rulemaking filed in the above-captioned proceeding.

A. Background/Interest of HBO

On November 16, 1999, the firm of Edwards and Kelcey filed a petition for rulemaking with the Commission seeking revision of "Section 101.145 of the Rules, the FCC Form 601 license application, and the related processing of applications for point-to-point microwave." These provisions govern the deployment of microwave stations operating in the "C-band" frequencies (which are shared with the fixed satellite service) where the microwave antennas are pointed within two degrees of the geostationary satellite orbital arc. Currently, applications involving any such deployments must include a request for a waiver of the FCC's rules, and the applications are not processed until the waivers are granted.

Edwards and Kelcey seeks to amend the rules to require waivers only for those applications for C-band microwave facilities which propose to transmit above certain power

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levels. HBO submits that the petition should be denied because Edwards and Kelcey fails to provide any justification for its proposal, which effectively eliminates two of the three major requirements for deploying C-band microwave facilities directed within two degrees of the geostationary arc: (1) that such operations be permitted only where there is no reasonable alternative transmission path; and (2) that the applicant demonstrate that no harmful interference will occur, regardless of the power level of the proposed microwave stations. By eliminating these two important tests, Edwards and Kelsey's proposal runs a significant risk of creating unacceptable interference with C-band satellite operations.

HBO has a well-defined interest in the outcome of this proceeding because its premium program services are distributed domestically and internationally over C-band satellite systems. Interference to these satellite systems caused by microwave stations operating in the C-band frequencies could interfere with HBO's transmissions and degrade the quality of services HBO provides to its customers. This concern is a fundamental underpinning to Section 101.145: "[t]hese limitations are necessary to minimize the probability of harmful interference to reception in the bands 2655-2690 MHz, 5925-6875 MHz, and 12.7-12.75 GHz on board geostationary-space stations in the fixed-satellite service."¹

B. The Edwards and Kelcey Petition Should Be Denied

To avoid microwave interference to C-Band satellite operations, the Commission, in its discretion, will waive Section 101.145 to permit C-band microwave antennas to point within two degrees of the geostationary arc, on a case-by-case basis, only where a three-part test is met: (1) the microwave applicant demonstrates that there is no reasonable alternative to the transmission path proposed; (2) there is no evidence that an exception would cause possible

¹ See 47 C.F.R. § 101.145.

harmful interference to an authorized satellite system; and (3) the maximum value of the equivalent isotropically radiated power (“EIRP”) does not exceed +47 dBw for any antenna beam directed within 0.5 degrees of the geostationary satellite arc; or +47 to +55 dBw, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the geostationary arc.²

Edwards and Kelcey’s proposed modification, although described as “fairly narrow,” in fact would completely eliminate the first two prongs of the Commission’s test.³ The petition, however, fails to acknowledge this fundamental change, let alone justify it. This deficiency alone supports denial of the petition because Edwards and Kelcey has failed to provide “all facts, views, arguments and data deemed to support the action requested.”⁴ Instead, Edwards and Kelcey dedicates its entire pleading to collapsing the rule into a single “power level” test. Simply put, Edwards and Kelcey has not met its burden of proof.

The suggested deletion of the first prong of the waiver test would fundamentally change the operation of the Commission’s rules. The “no justifiable alternative path” element is designed to limit, from the outset, the number of microwave stations that can be built with antennas pointing within two degrees of the geostationary satellite arc. Under the proposed revisions, HBO and other entities using C-band satellite systems would be subject to potential interference, even when reasonable alternatives to the proposed microwave path are available. This proposed significant expansion of the rules has no justification in the record or in fact.

² Id.

³ See Edwards and Kelcey Petition at 6 (the petition rewrites Section 101.145(b) in a manner that removes the requirements that there be no other reasonable alternative transmission path and that an absence of interference be demonstrated).

⁴ See 47 C.F.R. § 1.401(c).

In addition, Edwards and Kelcey has failed to demonstrate how its recommended modification is consistent with other protections provided in the Commission's rules. Although the rules explicitly require that an applicant for a C-band microwave facility pointed within two degrees of the geostationary arc demonstrate that there will be no harmful interference and that the microwave EIRP will not exceed the regulatory maximum, the Edwards and Kelcey approach would conflate these two requirements. Thus, Edwards and Kelcey argues that the maintenance of low EIRP thresholds will serve as a proxy for the harmful interference inquiry, and it requests that the Commission require waivers only when Section 101.145's EIRP limits are exceeded.⁵

This argument fails to recognize that C-band satellite systems and the various transmission services they provide do not function in a homogenous environment. Satellite systems operate over many different power levels, with different transmission and reception parameters. Moreover, certain types of transmissions on satellite systems are more susceptible to interference than others. This lack of homogeneity is precisely why Section 101.145 has both the harmful interference test and EIRP limits. Edwards and Kelcey would ignore this fact, merge the two independent inquiries, and deprive the Commission of the ability to make a case-by-case examination to determine whether the particular facts justify a grant of a waiver. In fact, the Edwards and Kelcey proposal would expand the rules by permitting waivers for microwave facilities with EIRPs even higher than those currently permitted, while at the same time routinely authorizing all applications with EIRPs lower than those specified in Section 101.145. This is hardly the "fairly narrow" rule change that Edwards and Kelcey purports to advance.⁶

⁵ Id. at 6.

⁶ Id. at 1.

Edwards and Kelcey attempts to support its proposed rule changes on the basis that “a license application including a waiver request can take several months.”⁷ While this assertion may support a need to streamline the Commission’s internal processes, it does not justify revision of Section 101.145. The need for more expeditious processing of waiver requests cannot be permitted to undermine the need to examine legitimate interference concerns.

Finally, Edwards and Kelcey claims that the existing waiver process is unnecessary because such “request[s] will likely be granted.”⁸ The likelihood of the Commission granting waiver requests is not determinative of whether a rule should be altered. In fact, a high rate of waiver approvals may simply indicate that the Commission’s rules are working properly and that microwave users avoid applying for facilities that they know do not meet the Commission’s three-prong test.

C. Conclusion

The Edwards and Kelcey proposals would effectively eliminate two of the three tests that the Commission currently employs to ensure: (1) that the number of C-band microwave facilities pointed in close proximity to the geostationary arc are limited and (2) that such facilities that are authorized will not cause interference to satellite operations. Because the justification for

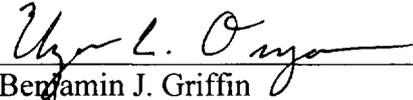
⁷ Id. at 4.

⁸ See Edwards and Kelcey petition at 5. The petition also states that “such waiver requests are almost always granted.” Id. at 6.

eliminating these important requirements has not been made, HBO respectfully requests that the Commission deny the petition of Edwards and Kelcey.

Respectfully submitted,

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April 7, 2000

CERTIFICATE OF SERVICE

The undersigned, Uzoma C. Onyeije, hereby certifies that this 7th day of April, 2000, I have caused a true and correct copy of the foregoing Opposition of Home Box Office to be served via U.S. first class mail, postage prepaid, on the following:

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