EX PARTE OR LATE FILED

ORIGINAL

WILLKIE FARR & GALLAGHER

Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20036-3384

202 328 8000
Fax: 202 887 8979

August 3, 2000

RECEIVED

AUG 3 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W., TW-A325
Washington, D.C. 20554

Re: *Ex Parte* Submission, CC Docket No. 00-19; RM-9418

Dear Ms. Salas:

Enclosed for filing on behalf of Winstar Communications, Inc. ("Winstar") is a corrected version of Winstar's Comments in the above-referenced dockets, initially filed July 20, 2000. The word "certification" was incorrectly used instead of "verification" in several places in the pleading. Winstar supports the adoption of verification procedures for fixed microwave transmitters for the 39 GHz and LMDS bands. Accordingly, the following changes were made in Winstar's corrected Comments:

- In the "Summary" of the Comments, third paragraph, fifth line, the word "verification" has been substituted for "certification."
- Section III.B of the "Table of Contents" now reads: "The Commission Should Permit Verification Procedures for Fixed Microwave Transmitters For The 39 GHz and LMDS Bands."
- Section III.B of the text of the Comments now reads: "The Commission Should Permit Verification Procedures for Fixed Microwave Transmitters For The 39 GHz and LMDS Bands."
- The caption no longer includes reference to WT Docket No. 94-184, CC Docket No. 83-2, and RM-7861.

An original and six (6) copies are being filed. I apologize for any inconvenience these errors may have caused.

Sincerely,

Sophie J. Keefer

Sophie J. Keefer

cc: Joseph M. Sandri, Jr.
Barry J. Ohlson

RECEIVED

AUG 3 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services	)	WT Docket No. 00-19
	)	
Telecommunications Industry Association Petition for Rulemaking	)	RM-9418

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Philip L. Verveer
Sophie J. Keefer
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036-3384
Tel. (202) 328-8000

Joseph M. Sandri, Jr.
Barry J. Ohlson
WINSTAR COMMUNICATIONS, INC.
1615 L Street, N.W., Suite 1260
Washington, D.C. 20036
Tel. (202) 833-5678

August 3, 2000

SUMMARY

Winstar supports the Commission's efforts to eliminate duplicative, outmoded, and unnecessary regulations concerning microwave radio services through its forbearance authority. To that end, Winstar recommends that the Commission forebear from enforcing certain of its Part 101 information-posting and record-keeping requirements with respect to customer sites for geographic area licensees, such as 39 GHz and LMDS licensees. These rules, as applied to the thousands of customers sites operated by geographic area licensees, are overly burdensome. Moreover, they are not necessary in the public interest, as there are other means to determine to whom equipment belongs in cases of interference.

Winstar also supports various of the proposals contained in the Notice concerning the LMDS technical rules. Winstar asserts that the Part 101 emissions mask is sufficient, subject to some minor clarifications to the Commission's definitions of "assigned frequency" and "authorized bandwidth." Winstar also supports the adoption of verification procedures for fixed microwave transmitters for the 39 GHz and LMDS bands. In addition, Winstar supports TIA's proposals with respect to the 23 GHz band, including increased conditional licensing in this band.

However, Winstar cannot support the Notice's proposals concerning adoption of an auction procedure for point-to-point microwave services. The point-to-point licensed bands are heavily utilized by licensees who require additional spectrum for routine expansion and modification. If the Commission is convinced that it must adopt auction procedures, it should maintain the existing licensing scheme, establishing competitive bidding procedures to resolve mutually exclusive applications only.

TABLE OF CONTENTS

PAGE

I. INTRODUCTION 1

II. FORBEARANCE AND REGULATORY FLEXIBILITY 2

A. Geographic Area Licensees Should Be Exempted From Part 101 Information-Posting And Record-Keeping Requirements. 2

III. TECHNICAL ISSUES. 6

A. The Existing Part 101 Emissions Mask Requirement For Operating Frequencies Above 15 GHz Is Sufficient 6

B. The Commission Should Permit Verification Procedures For Fixed Microwave Transmitters For The 39 GHz and LMDS Bands. 7

C. Winstar Supports Several of TIA's Proposals Concerning The 23 GHz Band 7

D. Winstar Supports Conditional Licensing In The 23 GHz Band 8

IV. BALANCED BUDGET ACT OF 1997 9

A. The Commission Should Retain the Current Point-to-Point Licensing System. 9

V. CONCLUSION. 11

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of	)	
	)	
Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services	)	WT Docket No. 00-19
	)	
Telecommunications Industry Association Petition for Rulemaking	)	RM-9418

COMMENTS OF WINSTAR COMMUNICATIONS, INC.

Winstar Communications, Inc. ("Winstar"), by its attorneys, hereby submits its comments in the above-captioned proceedings.[1]

I. INTRODUCTION.

Winstar, through its various subsidiaries, is: (1) the largest licensee of spectrum in the 38.6-40.0 GHz band ("39 GHz band"), (2) the winning bidder for 931 39 GHz licenses in Auction No. 30, (3) the winner of fifteen LMDS licenses in Auction No. 17, and (4) the licensee of a number of point-to-point links in several other terrestrial microwave fixed radio services, in particular the 18 GHz and 23 GHz bands. Winstar uses its licensed spectrum to provide facilities-based fixed wireless broadband

---

[1] In re Amendment of Part 101 of the Commission's Rules to Streamline Processing of Microwave Applications in the Wireless Telecommunications Services; Telecommunications Industry Association Petition for Rulemaking, WT Docket No. 00-19, RM-9418, *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 00-33 (rel. Feb. 14, 2000) ("Notice"). A summary of the Notice was published in the Federal Register on June 20, 2000. 65 Fed. Reg. 38234 (June 20, 2000).

communications services throughout the United States, including local and long distance, data, voice and video services, as well as high speed Internet and information services.

II. FORBEARANCE AND REGULATORY FLEXIBILITY.

Winstar supports the FCC's efforts to eliminate regulations concerning microwave radio services licensed by the Wireless Telecommunications Bureau that are "duplicative, outmoded, or otherwise unnecessary."[2] Section 10 of the Communications Act provides the Commission with authority to forbear from applying the Act and the Commission's rules to telecommunications carriers if the Commission determines that "enforcement of the regulation or provision is not necessary to ensure just and reasonable charges, practices, classifications, and regulations; enforcement is not necessary for the protection of consumers; and forbearance is consistent with the public interest."[3]

A. Geographic Area Licensees Should Be Exempted From Part 101 Information-Posting And Record-Keeping Requirements.

Winstar recommends that the Commission forbear from enforcing the following rules for geographic area licensees, such as those in the 39 GHz and LMDS services:

- Section 101.215, requiring licensees to post licensee contact information at each station;
- Section 101.217, requiring licensees to maintain records of transmitter measurements and maintenance checks for all stations; and
- Section 101.149(b), requiring 39 GHz licensees to post a service-area authorization at each station.

---

2 Notice, at ¶ 34.

3 Id. at ¶ 83.

Winstar contends that the above rules no longer are in the public interest for customer sites of geographic area licensees, and that the Commission should forbear from enforcing these rules at customer sites for geographic area licensees.[4] The rules would continue to apply to licensee hub sites. Consistent with the guidelines for forbearance, these license-posting and record-keeping requirements are not necessary to ensure that geographic area licensees' charges, practices, classifications, and services are just and reasonable, and not unjustly or unreasonably discriminatory. Likewise, they are not necessary for the protection of consumers.

Geographic area, fixed service licensees, including Winstar, presently are operating facilities at thousands of sites across the country. All of these fixed service facilities, like mobile systems, are operated pursuant to a geographic license. The fixed service geographic licensee, like mobile licensees, is the exclusive holder of a channel in a large area that typically covers a metropolitan area. It is unnecessarily burdensome to require the maintenance of license and transmitter information at each customer site when these facilities are operated pursuant to a geographic license. Indeed, PCS and cellular telephone users do not keep copies of their carriers' licenses with their mobile telephones.

The Commission required licensees to maintain station records at each site in order to permit licensees or FCC field personnel to identify potential interference problems.[5] There simply is a minimal benefit to these rules as applied to geographic

---

4 Cf. 47 C.F.R. § 101.215(b) (posting requirements do not apply to remote stations using frequencies listed in § 101.147(b)).

5 See Public Information Collections Being Reviewed by FCC For Extension Under Delegated Authority, PRA 95-019, *Public Notice*, 1995 FCC LEXIS 6777, at *7 (rel. Oct. 16, 1995).

licensees because interference problems are virtually non-existent for geographic area licensees when compared to the potential for interference that arises from point-to-point, site-specific licensees.

In rejecting a similar proposal regarding elimination of information-posting requirements by Winstar in its comments in WT Docket No. 98-20, the Commission noted that "a transmitter causing interference due to poor maintenance or accident can be found with direction-finding equipment, but without information regarding the owner/operator available at the site, an aggrieved party will not know who to contact for relief from the interference."[6] Therefore, the Commission concluded that "the public interest in having a[] readily identifiable contact at each transmitter site outweighs the inconvenience to licensees."[7] However, to the extent that contact information is needed by the FCC or other parties, it is usually clear to whom particular equipment belongs since virtually all equipment operated by geographic area licensees is installed on a building by building basis. In other words, if there is an issue regarding equipment in the building, one can simply contact the building engineer for information about communications companies operating in the building. Most importantly, one would not have access to transmitters within the building without coordinating with the building

---

6 In re Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Report and Order*, 13 FCC Rcd. 21027, at ¶ 164 (1998).

7 Id.

engineer in the first place.[8] Geographic area systems are operated much differently than point-to-point systems, and the information-posting and record-keeping rules that made sense for point-to-point systems licensing should not be applied to all terrestrial microwave systems.

Finally, to the extent it is needed, licensee information is readily available from the Commission should a party need to know the geographic licensee in a particular band. For example, any person with Internet access can check licensing records by performing a license search on the Commission's Universal Licensing System ("ULS").[9] In addition, "[t]he Geographic Information System (GIS) feature within ULS enables users to create customized maps to view market areas of geographic-based licensees and site locations of site-based licensees," as well as "allow[ing] users to query by call sign or view all licenses authorized to operate within a specific range of frequencies."[10] Thus, the Commission should forebear from enforcing the information-posting and record-keeping regulations in Part 101 with respect to customer sites of geographic area licensees.

---

8 Transmitters are frequently bounded by protective fencing or are situated in locations, such as building rooftops, that are inaccessible to the public; thus, third parties would be precluded from getting close enough to a transmitter to read a sign displaying contact information.

9 In re Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, WT Docket No. 98-20, *Second Report and Order*, 14 FCC Rcd. 9851, at ¶ 8 (1999) ("[A]nyone with a computer and an Internet account will be able to access ULS to stay abreast of the status of licenses and applications.").

10 Id.

III. TECHNICAL ISSUES.

The Notice seeks comment on a variety of issues related to the LMDS technical rules and TIA's proposals concerning the 23 GHz band. For the most part, Winstar supports the proposals contained in the Notice. Winstar agrees that it is important for the Commission to reconsider its technical rules from time to time to ensure that the Part 101 technical rules are not inconsistent with the operations of geographic area systems, such as those operated in the LMDS and 39 GHz bands, as opposed to point-to-point systems.[11] In addition, Winstar supports revisions to the rules that would promote greater flexibility in the 23 GHz band, such as increased conditional licensing.[12]

A. The Existing Part 101 Emissions Mask Requirement For Operating Frequencies Above 15 GHz Is Sufficient.

In the Notice, the Commission asks whether the existing Part 101 emission mask requirement will be too severe for LMDS.[13] Winstar supports the Commission's efforts to provide LMDS operators maximum flexibility with regard to the emission mask requirement. One possible solution is for the Commission to clarify that the Section 101.3 definition of "assigned frequency" includes the center frequency of an individual transmitter/modulator, for block-assigned bands, such as the LMDS band.[14] Additionally, the definition of "authorized bandwidth" should include the nominal radiofrequency

---

11 Notice, at ¶ 54.

12 Id. at ¶ 62.

13 Id. at ¶ 54; see 47 C.F.R. § 101.111(a)(2)(ii).

14 See 47 C.F.R. § 101.3.

bandwidth of an individual transmitter/modulator in block-assigned bands.[15] Clarifications of these definitions would ensure that the current emission mask requirement will be reasonable for LMDS and other block-assigned services in the future. Alternatively, Winstar supports a modification to Section 101.109 and/or Section 101.111 to indicate that LMDS equipment manufacturers and operators can specify and use the actual bandwidth of the designed transmitter.

B. The Commission Should Permit Verification Procedures For Fixed Microwave Transmitters For The 39 GHz and LMDS Bands.

The Notice tentatively concludes that point-to-point and point-to-multipoint transmitters for the 39 GHz and LMDS bands should be subject to the less burdensome equipment verification procedures, rather than certificated by the Commission.[16] Winstar strongly supports this proposal. There is no compelling reason to continue to require that these transmitters be subject to the certification process. Permitting the marketing of fixed microwave transmitters that have been verified by the manufacturer for these services would permit licensees such as Winstar to more rapidly deploy their services.

C. Winstar Supports Several of TIA's Proposals Concerning The 23 GHz Band.

The Notice seeks comment on TIA's proposed band plan for the 23 GHz band. Winstar agrees with TIA that adoption of a channel plan for this band will permit more efficient use of this band, as well as encouraging more use of the band for short-haul

---

15 See id.

16 Notice, at ¶ 57.

fixed microwave service users.[17] In addition, Winstar supports a frequency tolerance of 0.001% for this band, as well as a spectrum efficiency requirement of 1 bps/Hz.[18]

Winstar notes TIA's proposal to designate an additional 200 MHz in the 23 GHz band for low power, limited coverage systems.[19] Winstar does not oppose the proposal but cautions that the adoption of this proposal would reduce by two, from 20 to 18, the number of frequencies eligible for high power operations. As such, the Commission should not designate more than 200 MHz of additional spectrum for low power systems.

D. Winstar Supports Conditional Licensing In The 23 GHz Band.

It was proposed in the Notice that conditional licensing in the 23 GHz should not be permitted because use of these frequencies must be coordinated by the Commission with NTIA, and the two agencies do not have an agreement concerning conditional licensing on these frequencies.[20] Winstar disagrees. Conditional licensing allows the microwave industry to operate more efficiently, as it provides licensees "greater flexibility in coordinating and consolidating construction projects."[21] Moreover, the additional step of seeking an STA is eliminated.[22] Indeed, Winstar has previously

---

17 Id. at ¶¶ 63-64.

18 Id. at ¶ 66.

19 Id. at ¶ 68.

20 Id. at ¶ 61.

21 Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-184, *Report and Order*, 11 FCC Rcd. 13449, at ¶ 27 (1996)("Part 101 Order").

22 Id.

advocated that the Commission extend the conditional licensing provisions of Section 101.31(e) to all Part 101 fixed microwave licensees.[23]

To this end, the Commission can, as part of this proceeding, work with NTIA and the public sector to establish a conditional licensing method. The Commission should adopt the proposal of the TIA fixed section and adopt streamlined coordination procedures to permit conditional licensing in the 23 GHz band (the same procedure used among non-government users).[24] In addition, the Commission should permit conditional licensing on all frequencies in the 23 GHz band if the ERP is not above 55 dBm. Indeed, the Commission's rules and the Part 101 Order do not expressly preclude conditional licensing on all 23 GHz frequencies if this condition is met.[25]

IV. BALANCED BUDGET ACT OF 1997.

A. The Commission Should Retain the Current Point-to-Point Licensing System.

In its Notice, the FCC made a number of proposals to impose a more comprehensive auction structure on the existing procedures for licensing point-to-point microwave facilities in the bands above 2 GHz. These proposals include: (1) the auction of geographic area licenses subject to incumbents' rights, as in the 39 GHz band; (2) the relocation of current licensees in conjunction with an auction, as in the 2 GHz band; and (3) the identification of bands in which incumbents would retain co-primary status and

---

23 Comments of Winstar Communications, Inc., In re PCIA Request for Streamlining of Regulations, DA 98-1687, at 3-4 (filed Sept. 23, 1998).

24 TIA Petition, at 12-13.

25 See 47 C.F.R. § 101.31(b); Part 101 Order, at ¶ 29 (stating only that the Commission would not allow conditional licensing in the 21.2-23.6 GHz band for operations with an ERP greater than 55 dBm).

other bands in which incumbents would have secondary status vis-a-vis new licensees authorized in an auction, as in the 31 GHz band.[26] Winstar opposes each of these three proposals and urges the FCC to retain its current procedures for licensing point-to-point microwave services.

Winstar recognizes the Commission's concern that demand for spectrum above 2 GHz may be growing, yet auctions will not improve spectrum access. The point-to-point licensed bands are utilized by an extremely diverse set of licensees. These licensees have systems in place which require routine expansion and modification. Additionally, to the extent the FCC is proposing to support the relocation of incumbent licensees to accommodate auctions, Winstar simply asks where will they go? With the impending relocation of point-to-point microwave licensees from the 18 GHz and 2 GHz bands to accommodate satellite interests, Winstar is deeply concerned that the FCC is considering more relocation without identifying any new spectrum.

In its Option IV, the FCC proposed to "retain the current licensing approach utilizing a variety of channelization plans and site-by-site licensing, but establish new competitive bidding procedures to resolve mutually exclusive applications."[27] In the event the FCC is adamant about imposing some type of auction procedure on the licensing of point-to-point facilities, Winstar supports Option IV. Maintaining the existing licensing scheme as it is will allow licensees to have the flexibility to request only those links needed to provide support services to their wireless areas.

---

26 Notice, at ¶ 77.

27 Id.

V. CONCLUSION.

For the foregoing reasons, Winstar respectfully urges the Commission to take the actions outlined herein.

Respectfully submitted,

WINSTAR COMMUNICATIONS, INC.

By: Sophie J. Keefer

Philip L. Verveer
Sophie J. Keefer

WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036-3384
Tel. (202) 328-8000

Its Attorneys

Joseph M. Sandri, Jr.
Barry J. Ohlson

WINSTAR COMMUNICATIONS, INC.
1615 L Street, N.W., Suite 1260
Washington, D.C. 20036
Tel. (202) 833-5678

August 3, 2000

CERTIFICATE OF SERVICE

I, Sophie J.Keefer, do hereby certify that on this 3rd day of August, 2000, copies of the foregoing "Comments of Winstar Communications, Inc." were forwarded by first class U.S. mail unless otherwise indicated to the following parties:

D'wana Terry, Chief
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
(Via Hand Delivery)

Christopher R. Hardy
President
Comsearch
2002 Edmund Halley Drive
Reston, Virginia 20191

Ramona Melson, Deputy Chief
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
(Via Hand Delivery)

Consolidated Spectrum Services
22 Merrill Avenue
Atkinson, New Hampshire 03811

Michael J. Pollack
Policy and Rules Branch
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
(Via Hand Delivery)

Barry Lambergman
Director, International Regulatory Affairs
1350 Eye Street, N.W., Suite 400
Washington, D.C. 20005-3305

Edgar Class
Policy and Rules Branch
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554
(Via Hand Delivery)

George Cummings
Spectrum Principal Staff Engineer
8075 S. River Parkway, H-154
Tempe, Arizona 85284

Robert J. Miller
Gardere & Wynne, LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201

Russell H. Fox
Russ Taylor
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, D.C. 20005

Jeffrey L. Sheldon
Brett Kilbourne
United Telecom Council
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036

Gary M. Epstein
James H. Barker
Kimberly S. Reindl
Latham & Watkins
1001 Pennsylvania Avenue, N.W.
Suite 1300
Washington, D.C. 20004-2505

J.E. Boatwright
Information Technology Officer
County of Riverside
7195 Alessandro Blvd.
Riverside, CA 92506

Andrew R. Paul
Satellite Broadcasting and
Communications Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

David Ackerman
Giganet Wireless Systems, Inc.
777 Corporate Drive
Mahwah, NJ 07430

Robert S. Foosaner
Lawrence R. Krevor
James B. Goldstein
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

James (Andy) Butler
Dane E. Ericksen
Christopher D. Imlay
Society of Broadcast Engineers, Inc.
Booth, Freret, Imlay & Tepper
5101 Wisconsin Avenue, N.W.
Suite 307
Washington, D.C. 20016

Peter Tannenwald
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, D.C. 20036-3101

Annette Allen
California Public Safety Radio Association
6641 Crowley Avenue
Ventura, CA 93003

Bryan Hawkins
Wireless Communications Division
technology Services Department
City of Long Beach, CA

Edwin N. Lavergne
Tamara Y. Brown
Shook Hardy & Bacon, LLP
600 14th Street, N.W.
Washington, D.C. 20005-2004

Alfred M. Mamlet
Marc P. Paul
Steptoe & Johnson, LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Michael Fitch
Clayton Mowry
The Satellite Industry Association
225 Reinekers Lane
Suite 600
Alexandria, VA 22314

David K. Moskowitz
EchoStar Satellite Corporation
5701 South Santa Fe
Littleton, CO 80120

Philip L. Malet
Pantelis Michalopoulos
Marc A. Paul
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

David H. Pawlik
Brian D. Weimer
Skadden, Aprs Slate Meagher
& Flom, LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005-2111

Sophie J. Keefer

Sophie J. Keefer