

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

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AUG 28 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Satellite Industry Association Request)
For Amendment of the U.S. Table of)
Frequency Allocations to Designate)
2500-2520/2670-2690 MHZ Frequency)
Bands for the Mobile-Satellite Service)

RM-9911

To: The Commission

OPPOSITION

Arizona Board of Regents for Arizona State University (ASU), Boston Catholic Television Center, Inc., Butler County Community College, California State University, Northridge, Charlotte-Mecklenburg Public Broadcasting Authority, Connecticut Public Broadcasting, Inc., Diocese of Youngstown, Ohio, Dutchess Community College, Educational Television Association of Metropolitan Cleveland, Friends University, Hampton Roads Educational Telecommunications Association, Inc., Hartnell Community College District, Jefferson County Board of Education, Monterey County Superintendent of Schools, New Jersey Public Broadcasting Authority, Newman University, San Jose State University, Santa Clara County Board of Education, Santa Cruz County Superintendent of Schools, University of North Carolina, WHYY, Inc., Wichita Public Schools-USD #259, Wichita State University, by their counsel, file these comments in response to the Public Notice DA00-1673, released July 28, 2000 regarding the Petition for Rulemaking filed by the Satellite Industry Association (SIA) .¹

¹ Separately, a filing has been made today to address the Cellular Telecommunications Industry Association Petition listed on the same Public Notice concerning the implementation of third generation ("3G") wireless services, or International Mobile Telecommunications-2000 ("IMT-2000") services.

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List A B C D E

1. The parties to these Joint Comments (Commenters) include a broad spectrum of ITFS licensees and applicants, which have joined to urge the Commission to save the 2500-2690 MHz band for its existing and planned future uses. Some have held licenses for over 20 years and operate widespread networks based on traditional ITFS design considerations including hundreds of receive sites. Others are license holders which have Excess Capacity Leasing Agreements with "wireless cable" entrepreneurs and which are still pursuing construction and activation of facilities. Some have participated in the conversion of analog television systems to digital transmission systems; others have participated in two-way digital experiments and are looking forward the advantages of the recently changed rules to implement two-way digital systems.

2. For example, Arizona State University (ASU) offered 119 courses via ITFS in fiscal 2000. In addition, 116 Internet courses were offered. Enrollment in these courses delivered via these technologies totaled 4679 in fiscal 2000 and continues to increase, permitting students who cannot get to a campus to have access to a university education. ASU has done this while working with its excess capacity lessee on a digital conversion program, one of the first in the country.

3. Joint Commenter The Hampton Roads Educational Telecommunications Association, Inc. (HRETA) was started in 1961 by Norfolk and Hampton Public Schools as an experiment in instructional television. Working with numerous educational partners, HRETA has used ITFS technology for fifteen years to deliver educational and public service information to a wide array of learners, including medical education to rural medical health facilities, televised college credit courses and edu-

cational programming service to thirteen (13) area secondary school systems for use in the classroom and media centers.

4. In some markets, the transition to digital technology and the two-way rules are being extensively studied and measured by educators with ITFS licenses, as in Wichita, Kansas. The Wichita ITFS License Holders (Joint Commenters Butler County Community College, Friends University, Newman University/Diocese of Wichita, Wichita Public Schools - USD 259 and Wichita State University) has been meeting since August of 1999 to better understand the FCC's two-way ruling and to make the necessary adjustments to the spectrum. The group has established that the two-way channels could benefit the 90,000 students at the institutions in providing a number of services, and is presently planning a transition of its analog video system to a digital system.

5. Other Commenters have mature programs which require all the channel capacity they can maintain. For example, San Jose State University programs over 80 hours a week to over 500 students, while at the same time working with Sprint in development of a two-way system which will provide commercial high-speed Internet service to the Bay area. Similarly, Commenter Jefferson County Public Schools of Louisville, Kentucky uses its ITFS system extensively, providing 160 hours of instructional programming per week to over 150 schools, in addition to 4-6 hours a week of professional development training.

6. Participants in this comment include Hartnell College, an applicant since 1995 which has been unable to so far resolve the application tie-up, but which has been following the changing rules governing ITFS, looking forward to provision of

educational services to remote locations and students' homes, as well as the accommodation of students with odd working hours or requirements in other languages which may be better met through ITFS than through conventional classroom methods.

7. As a preliminary procedural matter, the Commenters must point out that the Commission has established a deadline during the absolute worst time for educators to address an issue of importance to them. Coordination of comments during the month of August in light of the academic schedules which predominate among many of the Commenters was unrealistic, and it is urged that the Commission consider more carefully the needs of affected parties when planning comment or reply comment dates in any proceeding which results from these Petitions.

8. In its Petition, SIA has asked for reallocation of 2500-2520 MHz (space to earth) and 26790-2690 MHz (earth to space) for mobile satellite service (MSS) in the United States. SIA notes that the international allocation of these bands, reached at the 1992 World Administrative Radio Conference, becomes effective January 1, 2005; and so asks the FCC to license U.S. systems in the bands in the 200-2002 time frame. SIA fails in its Petition to note that the spectrum it has requested is occupied by licensees in the Instructional Television Fixed Service (ITFS) and the Multichannel Multipoint Distribution Service (MMDS), and that the MMDS portion has already been subject to auction (Auction #6, closed March 28, 1996). Presently, ITFS and MMDS licensees together occupy the 2500-2690 MHz band, which is generally licensed in four-channel groups of six Megahertz channels, with narrow-band "response" ("I"-channels) at the upper end of the band. SIA seeks the

spectrum on either end of the band, constituting ITFS Channels A-1, B-1, G-3 and parts of B-2 and G-3, all of MMDS Channel H3, and all of the "I" band response channels.

9. The Commenters support The National ITFS Association (NIA) in its opposition to the SIA petition. NIA's opposition has been circulated among interested ITFS licensees in advance of today's filing date. The Commenters agree with NIA that the SIA Petition fails utterly to provide "sufficient reasons in support" of commencing a rulemaking proceeding leading to reallocation of the requested spectrum and the licensing of satellite systems in that spectrum. SIA's Petition failed even to acknowledge the existence of incumbents in the band. The rules for development of the ITFS and MMDS services for digital two-way applications have only recently been finalized by the FCC. Some of the Commenters and other licensees in the industry have availed themselves of the first "window" for such two-way filings; others are in the planning stages to file at the next opportunity. In the past several years, ITFS and MMDS licensees have expended great time and personnel resources refining the FCC's rules and planning for system implementation. Consideration by the Commission of SIA's Petition at this time would undercut these efforts at a time when focus on these activities is required by all involved.

10. To the extent the FCC acts on SIA's Petition as part of a larger examination of the spectrum requirements of so-called 3-G services (see the comments filed simultaneously today by Joint Commenters regarding the Petition of the Cellular Telecommunications Industry Association), the Commenters urge the Commission to weigh and evaluate claims by the satellite industry for additional spectrum very

carefully, placing a high burden on satellite providers in view of the recent history of difficulties in the MSS industry. In this connection, the Commission should note the manner in which the SIA relegates the failure of the Iridium MSS system to a footnote in its Petition. SIA without irony recites the very long lead times required to design and implement MSS systems and the fact that "the estimates of the subscriber base for terrestrial wireless services were too low by several orders of magnitude" (SIA Petition, pps. 5, 8). In fact, it is widely believed Iridium failed because the lead time for satellite implementation is too long to keep up with technological advances and because the terrestrial mobile industry has been so successful, able to expand service areas and lower prices in a manner once not thought possible. It appears other MSS system operators are also in trouble. Numerous press reports indicate that data-only operator ORBCOMM Global LP and MSS operator Globalstar are also in dire financial difficulties.²

11. If the MSS is viable, numerous system operators are on the verge of receiving the licensing needed to begin construction and operation of new systems. Only last week, the Commission released final rules for the utilization by the MSS industry of 70 MHz carved from the 1990-2200 MHz band, displacing auxiliary broadcast licensees in the 1990-2200 MHz band. Applicants in the processing group for these frequencies will have an opportunity shortly to file conforming amendments and filing fees and will be issued licenses for operation. The Com-

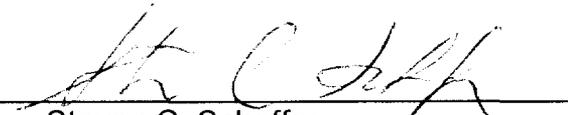
² "Industry News," Telecommunications Reports, August 21, 2000; "Wireless Industry Execs Complain about Regulations," Telecommunications Reports, May 29, 2000.

mission anticipates all eligible applicants to receive licenses "with adequate spectrum to launch service" and further states an expectation that future entry would be possible as licensees fail to meet licensing milestones and spectrum is recovered. Now would not seem the time to disrupt existing ITFS services or the planning and construction of advanced two-way digital ITFS and MMDS systems, when the MSS has yet to prove itself and has just been authorized for its next generation of services.

Accordingly, Joint Comments urge the Commission to dismiss the SIA Petition as premature and unnecessary. To the extent the issue of additional spectrum for Mobile Satellite Systems needs to be explored, a single proceeding on Third Generation Mobile Systems, as proposed by the Cellular Telecommunications Industry Association, would appear to be the appropriate mechanism by which the Commission would proceed.

Respectfully submitted,

SCHWARTZ, WOODS & MILLER

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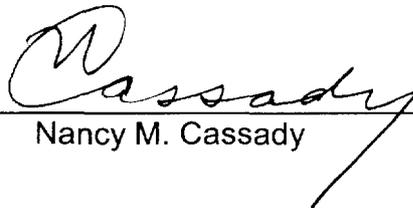
Its Attorneys

August 28, 2000

CERTIFICATE OF SERVICE

I, Nancy M. Cassady, Secretary in the law offices of Schwartz, Woods & Miller, do hereby certify that I have on this 28th day of August, 2000, sent by First Class United States mail, postage prepaid, copies of the foregoing OPPOSITION to

Mr. Michael Fitch, Chair
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Nancy M. Cassady