

Law Offices

HOLLAND & KNIGHT LLP

2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202

202-955-3000
FAX 202-955-5564
www.hklaw.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

November 3, 2000

PETER M. CONNOLLY
202-862-5989

Internet Address:
pconnoll@hklaw.com

VIA CAPITAL FILING SPECIALISTS

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, DC 20554

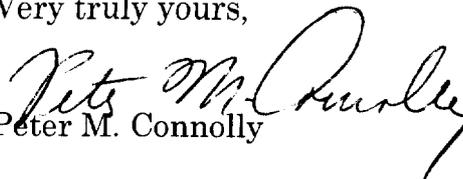
Re: The Establishment of Policies and Service Rules for the Mobile
Satellite Service in the 2 GHz Band (IB Docket No. 99-81) – TMI
Letter of Intent Amendment (File No. 189-SAT-LOI-97)

Dear Ms. Salas:

Herewith transmitted, on behalf of TMI Communications and Company, Limited Partnership ("TMI"), are an original and nine copies of an amendment to its above-referenced Letter of Intent filing.

In the event there are questions concerning this matter, please communicated with the undersigned.

Very truly yours,


Peter M. Connolly

cc (w/encl.): Thomas Tycz
Kathleen Campbell
Ron Reposi
Howard Griboff

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November 1, 2000

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

Re: The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band (IB Docket No. 99-81) / TMI Letter of Intent Amendments (FM No. 189-SAT-LOI-97)

Dear Ms. Salas:

Pursuant to the 2 GHz mobile satellite service ("MSS") processing round initiated in 1997, TMI Communications and Company, Limited Partnership ("TMI" or "the Company"), a Canadian-licensed MSS operator, advised the Federal Communications Commission ("FCC" or "the Commission") of its interest in operating a non-U.S. licensed space station to provide MSS to, from and within the United States, using frequencies in the 2 GHz band.¹ On August 25, 2000, the Commission released its Report and Order ("the *Order*") in the above referenced Docket to consider the applications and letters of intent ("LOIs") received from system proponents interested in providing service in this band. In the *Order* the Commission adopted policies and rules designed to expedite the authorization process and encourage utilization of 2 GHz spectrum for delivery of the benefits of MSS to all U.S. consumers nationwide,² and indicated that, to receive continued consideration, system proponents were to amend their applications or LOIs, if necessary, to bring them into conformity with the requirements and policies adopted in the *Order*.³ Additionally, the *Order* required system proponents to submit a narrative statement describing the orbital debris mitigation design and operational strategies, if any, that they plan to use.⁴

This letter constitutes TMI's response to the additional information requirements set out in the *Order*, as well as certain other informational requirements.

¹ "TMI Communications and Company, Limited Partnership, Letter of Intent by Non-U.S. Operator to Provide Mobile satellite Service (MSS) in 2 GHz Band", letter sent to William F. Caton, Acting Secretary, Federal Communications Commission, dated September 26, 1997.

² In the Matter of the Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, IB Docket No. 99-81, Report and Order, released August 25, 2000, ¶ 1.

³ *Ibid.*, ¶ 45.

⁴ *Ibid.*, ¶ 138.

System Amendments

TMI has reviewed the policies and rules established in the *Order*, and believes that its proposed 2 GHz MSS system, as described in its September 1997 LOI, is in conformity with these policies and rules.

Accordingly, TMI does not believe that any modifications to its proposed system are required in order to receive continued consideration by the Commission.

TMI will, however, respond to certain other requests for information or certification set forth in the *Order* and in Part 25 of the FCC's Rules, and FCC Form 312, noting the relevant *Order* paragraph rule section, or Form 312 question in connection with each such response.

1. Form 312, Questions 35-40⁵

In TMI's original LOI, filed September 26, 1997, it was noted that there was then no legal authority for the FCC to require an LOI filer to submit information regarding its basic qualifications and to answer FCC Form 312, Questions 36-40. Accordingly, in Question 35, TMI requested any necessary rule waiver to permit those questions not to be answered. However, as was noted in TMI's "Comments And Opposition To Petitions To Deny or To Hold In Abeyance" in this proceeding, filed June 3, 1998, the FCC's DISCO II rules regarding access to the U.S. market by foreign-licensed satellites, which do require such submissions, became effective on February 9, 1998.⁶

Though it is not clear that the DISCO II Order or any other FCC order makes the FCC's Rules retroactively applicable to the 2 GHz applications and though it is still uncertain that the FCC has the statutory authority to require an LOI filer to answer Question 40 of Form 312 (the "Anti-Drug Act of 1988" certification), in the interest of expediting matters and removing unnecessary potential sources of contention, TMI will answer those questions and withdraw its request for waiver in Question 35. The answers to Questions 36-39 are "No" in each instance. With respect to Question 40, neither TMI nor any other party to this application has ever been subject to a denial of benefits under Section 5301 of the Anti-Drug Act of 1988 because of a conviction for possession or distribution of a controlled substance. Hence, TMI answers this Question "Yes."

⁵ These question numbers refer to the April, 1997 version of FCC Form 312, which TMI attached to its September, 1997 LOI filing. The FCC has since released a new version of Form 312, in February, 1998. In that new version, Question 40 has become Question 41 and new Questions 40 and 42 have been added. TMI will also respond to new Questions 40 and 42.

⁶ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, IB Docket No. 96-111, Report and Order 12 FCC Rcd 24094 (DISCO II Order), ¶ 190.

2. Form 312 (February, 1998 Version), Question 40

The question is not applicable as TMI is not applying for a space station license in this proceeding, but rather will be using a satellite licensed by Industry Canada, the relevant Canadian licensing administration.

3. Form 312 (February, 1998 Version), Question 42

As is noted in TMI's LOI filing, TMI does plan to use a non-U.S. licensed satellite to provide service to the United States. Its satellite will be licensed by Industry Canada, the relevant Canadian licensing administration. TMI's response to the information requested in Section 25.137 of the FCC's Rules is given in Item 5 of this amendment.

4. Section 25.114(c) (Name, Address and Telephone Number of Counsel)

Peter M. Connolly
Holland & Knight, LLP
2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, DC 20037
202-862-5989

5. Section 25.137(a) of the FCC's Rules (Effective Competitive Opportunities)

Section 25.137(a) requires that LOI filers submit information demonstrating that U.S. licensed satellite systems will have effective competitive opportunities in the country in which the non-U.S. licensed space station is or will be licensed.

TMI is organized under the laws of Canada. Because Canada is a signatory to the World Trade Organization ("WTO") treaty and is a member state of the WTO, TMI's LOI filing should be considered under the same principles as would apply if the FCC were considering indirect ownership of a U.S. radio licensee by a citizen of a "WTO" country. Under those principles, a specific "effective competitive opportunities" showing is no longer required for applicants from WTO member countries. Rather, the Commission has characterized its policy as a presumption in favor of "entry" by nationals of WTO countries.⁷

The FCC's rules also now permit applicants owned by citizens of WTO member countries to apply to exceed the twenty-five percent indirect foreign ownership benchmark in Section 310(d)

⁷ See Report and Order on Reconsideration (Rules and Policies on Foreign Participation in the U.S. Telecommunications Market), 12 FCC Rcd 23891 (1999) (Foreign Participation Order), ¶ 50.

of the Communications Act. Such applications are subject to streamlined processing. The FCC has held that:

"because foreign investment can promote competition in the U.S. market...the public interest will be served by permitting more open investment by entities from WTO member countries..."⁸

The general presumption in favor of "entry" should apply *a fortiori* here, since TMI does not seek a U.S. license, only the right to provide service in the United States pursuant to international agreements. TMI has met the specific "LOI" criteria set forth in the DISCO II Order. It has also met the specific requirements for 2 GHz satellite licensing set forth in prior orders in this proceeding. It should thus be deemed to be in compliance with Section 25.137(a) of the FCC's Rules.

6. Order, ¶ 52

Paragraph ¶ 52 of the *Order* requires that all 2 GHz MSS systems be capable of operating across 70 percent of the U.S. 2 GHz MSS frequency allocation (1990-2025 MHz and 2165-2200 MHz). TMI hereby certifies, based on its Engineering Exhibit attached to its LOI of September 26, 1997 (Attachment 2), that its CANSAT-M3 mobile satellite system will be capable of operating throughout the U.S. frequency allocation.

7. Section 25.143(b)(2)(iv) (50 state coverage)

Section 25.143(b)(2)(iv) of the FCC's Rules requires that MSS systems using GSO satellites be capable of providing mobile satellite service on a continuous basis throughout the 50 U.S. states, Puerto Rico, and the U.S. Virgin Islands, if technically feasible.

As is shown in Attachment 2, Section 7 to the TMI LOI filing, TMI's CANSAT-M3 satellite will have 72 spot beams providing coverage to all of the 50 states, Hawaii, and Alaska, as well as Puerto Rico and the U.S. Virgin Islands.

8. Section 25.143 (b)(1) of the Rules (Orbital Debris Mitigation)

As TMI has previously indicated to the Commission,⁹ TMI believes that orbital debris mitigation is part of the Company's responsibility as a satellite operator benefiting from access to the space resource.

⁸ *Ibid.*, ¶ 111

⁹ "Comments of TMI Communications and Company, Limited Partnership", IB Docket No. 99-81, June 24, 1999, at page 11.

In the case of TMI's existing MSS satellite, MSAT-1, the satellite has been designed to produce no in-orbit debris. MSAT-1 operations planning has included provision for de-orbiting the satellite at the end of its useful life. Specifically, the satellite orbit will be raised by a minimum of 100 km on all sides, with all RF radiation sources turned off. The satellite procurement contract required a specific allocation of fuel for this purpose.

Additionally, MSAT-1 is operated under contract by Telesat Canada ("Telesat"), a sister company to TMI. In order to minimize the possibility of collision of a Telesat-controlled satellite with any other uncontrolled object that may enter into the Geo-Stationary Orbit region, Telesat has entered into an agreement with MIT/Lincoln Laboratories ("MIT/LL"). Under this agreement, MIT/LL provides early warning of the intrusion of an uncontrolled object within the operating box of a satellite. With this information, Telesat is able to avoid the uncontrolled object. This agreement applies to all Telesat-controlled satellites, including MSAT-1.

In the case of future generation TMI satellites, including the satellite planned for operation in the 2 GHz band, TMI intends to follow similar orbital debris mitigation design and operational strategies as described above.

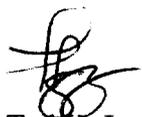
Fees

It was further indicated in the *Order* that applicants are to file all necessary fees no later than 30 days after a summary of the *Order* is published in the Federal Register.¹⁰ Pursuant to the "Corrected 2 GHz Cut-Off Notice", it is TMI's understanding that no application fee is required for a non-U.S. entity filing a LOI or amendments thereto.¹¹

Conclusion

TMI believes it has now submitted all information necessary under the FCC's rules and policies to allow the FCC to grant TMI an authorization to provide 2 GHz satellite service pursuant to its LOI filing. We ask that such authority be granted.

Respectfully Submitted,



Ted H. Ignacy
Vice President, Finance, of TMI Communications, Inc.,
General Partner of TMI Communications and
Company, Limited Partnership

¹⁰ IB Docket No. 99-81, Report and Order, ¶ 170.

¹¹ "Clarifications and Corrections to Public Notices Report Nos. SPB-88 and SPB-89, Establishing Deadlines for Applications, Letters of Intent, and Amendments to Applications in the 2 GHz and 36-51.4 GHz Frequency Bands", Public Notice Report No. SPB-95, released August 13, 1997, at page 1.