DOCKET FILE COPY ORIGINAL

LAW OFFICES
LEVENTHAL, SENTER & LERMAN P.L.L.C.
SUITE 600
2000 K STREET, N.W.
WASHINGTON, D.C. 20006-1809

NORMAN P. LEVENTHAL
MEREDITH S. SENTER, JR.
STEVEN ALMAN LERMAN
RAUL R. RODRIGUEZ
DENNIS P. CORBETT
BRIAN M. MADDEN
BARBARA K. GARDNER
STEPHEN D. BARUCH
SALLY A. BUCKMAN
NANCY L. WOLF
DAVID S. KEIR
DEBORAH R. COLEMAN
NANCY A. ORY
ROSS G. GREENBERG
H. ANTHONY LEHV
JOHN D. POUTASSE
CHRISTOPHER J. SOVA
PHILIP A. BONOMO
JUAN F. MADRID
JANET Y. SHIH

TELEPHONE
(202) 429-8970

TELECOPIER
(202) 293-7783

WWW.LSL-LAW.COM

WRITER'S DIRECT DIAL
202-416-6742

WRITER'S DIRECT FAX
202-429-4609

WRITER'S E-MAIL
DKEIR@LSL-LAW.COM

November 29, 2000

RECEIVED

NOV 29 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band (ET Dkt. No. 98-237)

Dear Ms. Salas:

On behalf of the Extended C-Band Ad Hoc Coalition, enclosed are the original and four (4) duplicates of its "Emergency Motion for Stay Pending Reconsideration." This motion was filed with the Commission electronically on the evening of November 28, 2000 (ECFS Confirmation # 20001128534069). These additional copies are being filed with the Commission in order to ensure that the complete filing is immediately available to FCC staff and to the public.

Please contact the undersigned with any questions you may have concerning this matter.

Respectfully yours,

David S. Keir

David S. Keir

Enclosures

cc: Service List

No. of Copies rec'd 0+4
List ABCDE

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

NOV 29 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	ET Docket No. 98-237
With Regard to the 3650-3700 MHz	)	RM-9411
Government Transfer Band	)	

To: The Commission

EMERGENCY MOTION FOR STAY PENDING RECONSIDERATION

EXTENDED C-BAND AD HOC COALITION

Stephen Baruch
David Keir
Leventhal Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
(202) 439-8970

November 28, 2000

Its Attorneys

TABLE OF CONTENTS

Summary iii

I. MEMBERS OF THE COALITION 2

II. STATEMENT OF FACTS 2

III. ARGUMENT 5

A. Likelihood of Success on the Merits 6

B. Members of the Coalition Will Be Irreparably Harmed Absent a Stay. 11

C. A Stay Of The Commission's Deadline for Filing New Satellite Applications for Extended C-Band Facilities Will Not Cause Any Harm To Other Parties 12

D. A Stay Of The Filing Deadline Would Promote The Public Interest 13

IV. CONCLUSION 14

Summary

The Extended C-Band Ad Hoc Coalition moves the Commission to issue a stay of the deadline by which satellite users have been required to file new or modified applications for earth stations to operate space-to-Earth links on a co-primary basis in the 3650- 3700 MHz band. In its *First Report and Order*, the Commission acted with undue haste in establishing November 30, 2000 as an arbitrary deadline.

There is no particular justification for the deadline established, and no actual benefit to be derived from enforcing it. The Coalition fully meets the standard for a stay, in that (1) there is a substantial likelihood that it will ultimately succeed on the merits; (2) irreparable harm would result to members of the Coalition in the absence of a stay; (3) injunctive relief would not substantially harm other parties; and (4) a stay would be in the public interest.

With respect to the likelihood of success on the merits, the Order contains multiple anomalies that suggest a modified approach should be adopted on reconsideration:

First, the Commission determined that the ability of FSS operators to file applications for new extended C-band facilities should be cut-off as of November 30, 2000, but offered no reason why this cut-off should occur before *any* of the other new rules established by the Commission have become effective – or before there is even an opportunity for Commission review of its action to commence.

Second, the Order fails to explain the Commission's decision to treat applications for earth stations located within ten miles of an existing grandfathered extended C-band site submitted after November 30, 2000 less favorably than those received before this date.

Third, while the Commission has acknowledged that it identified the 3650 - 3700 MHz band as a candidate band for increased use by non-Government FSS systems in March 1996, nowhere in the Order does the Commission describe any changes in circumstance or spectrum demand that would justify the complete abandonment of this approach.

Fourth, the limitations placed on this band undercut U.S. actions internationally to secure spectrum for use with Ka-band and V-band systems in that the subject frequencies were the only part of the extended C-band downlink advance published by the U.S. for these systems.

Fifth, the Commission should have undertaken a careful examination of the observations by both FSS and Fixed Service commenters that co-frequency use of this band is feasible, instead of dismissing the possibility of spectrum sharing in a conclusory manner.

Sixth, the Commission's action sharply limiting FSS spectrum use, while specifically noting the inability to use auctions for assignment of international satellite spectrum, suggests a potential bias against satellite spectrum use that may be contrary to the Communications Act.

The members of the Coalition will suffer irreparable harm if the filing window for new and modified earth station facilities in the extended C-band is not stayed immediately because the Commission will not even begin to review the Order's terms before the rights of FSS earth station operators to seek co-primary operating status are extinguished. The November 30 deadline also puts potential applicants in the ambiguous position of not knowing what requirements may be applied to them due to the pendency of issues relating to FSS TT&C use of the band in the Commission's *Further NPRM*, while at the same time they face a deadline after which any new facilities would be relegated to secondary status.

Grant of the stay requested by the Coalition will not cause harm to other parties, as it will merely preserve the *status quo* -- no entity has any specific interest in the processing status accorded to new FSS earth station applications. Although Fixed Service operators may gain authority in the future to operate in this band, none has any present interest in this spectrum.

Finally, a stay of the filing deadline would also serve the public interest by preserving the regulatory *status quo* and thereby maintaining the orderliness of the Commission's processes. Enforcement of the current deadline is likely to spark a significant number of applications designed to preserve whatever legitimate rights of use may be retained. Careful Commission reconsideration of the issues in this proceeding could result in a more equitable approach for future co-primary use of the extended C-band, thus eliminating the need for applicants to rush to take advantage of grandfathering.

The Coalition therefore urges the Bureau to take immediate action on this Motion <u>on or before December 1, 2000</u>, and stay the applicability of this aspect of its *First Report and Order* pending reconsideration.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	ET Docket No. 98-237
With Regard to the 3650-3700 MHz	)	RM-9411
Government Transfer Band	)	

To: The Commission

EMERGENCY MOTION FOR STAY PENDING RECONSIDERATION

The Extended C-Band Ad Hoc Coalition (the "Coalition") hereby moves the Commission to issue a stay of the deadline by which satellite users have been required to file applications for earth stations operating in the 3650- 3700 MHz band in order to secure co-primary status in this band. As demonstrated herein, in its *First Report and Order* in this proceeding issued October 24, 2000,[1] the Commission acted with undue haste in establishing November 30, 2000 as an arbitrary deadline for satellite users with a need to use this band to file applications for new or modified authority to operate space-to-Earth links in these frequencies – or lose forever the ability to be protected against terrestrial interference. There is no particular justification for this deadline, and no actual benefit to be derived from enforcing it. The Coalition therefore urges the Bureau to take immediate action on this Motion on or before December 1, 2000, and stay the applicability of this aspect of its *First Report and Order* pending reconsideration.

---

[1] *See Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, ET Docket No. 98-237, FCC 00-363, slip op. (released October 24, 2000) ("*First Report and Order*").

I. MEMBERS OF THE COALITION

The members of the Coalition are companies engaged in the business of operating fixed satellite earth stations or fixed satellite space stations for the provision of international voice, data, internet and broadband services, some portion of which is provided under licenses granted by the FCC.[2] All of the members have an interest in using the extended C-band frequencies at 3650-3700 MHz for a variety of downlink operations, either for limited primary FSS service or for tracking, telemetry and control ("TT&C") links.

II. STATEMENT OF FACTS

On December 18, 1998, the Commission released a *Notice of Proposed Rule Making and Order*, proposing to allocate the 3650-3700 MHz band on a primary basis to the terrestrial Fixed Service, while also proposing to grandfather existing Fixed-Satellite Service ("FSS") earth station sites in the band.[3] The Commission took this action despite the fact that it already had pending before it a Petition for Rule Making, filed more than a year earlier by nine satellite operators, for allocation of ten megahertz of spectrum in this band for TT&C operations for systems with primary service links in other frequency bands, and notwithstanding the existing international use of this band by satellite users in the U.S. market.[4] Indeed, the Commission stated that following the release of the *NPRM*, it would no longer accept applications in the

---

[2] The Coalition members include the following companies: AT&T Corporation, Concert Communications Company, GE American Communications, Inc., Hughes Network Systems, Lockheed Martin Global Telecommunications, Loral Space & Communications Ltd., New Skies Satellites N.V., PanAmSat Corporation, the Satellite Broadcasting and Communications Association, the Satellite Industry Association, TRW Inc., Wold International, Inc. and WorldCom, Inc.

[3] *See Amendment of the Commission's Rules with Regard to the 3650-3700 MHz Government Transfer Band*, ET Docket No. 98-237, 14 FCC Rcd 1295 (1999) ("*NPRM*").

[4] *See* Petition for Rule Making of Comm, Inc., EchoStar Satellite Corp., GE American Communications, Inc., Hughes Communications Galaxy, Inc., KaStar Satellite Communications Corp., Lockheed Martin Corp., Orion Network Systems, Inc., PanAmSat Licensee Corp., and VisionStar, Inc., RM-9411, filed August 7, 1997.

3650-3700 MHz band for: (1) new FSS earth stations, (2) major amendments to pending FSS earth station applications, or (3) applications for major changes in existing FSS earth stations.[5]

In comments filed in the proceeding, there was some ambivalence expressed by Fixed Service interests to the proposed allocation. Several commenters suggested that more spectrum would be necessary to achieve the Commission's goals,[6] while others contended that *alternative* spectrum would be more useful and appropriate than the band suggested in the *NPRM*.[7] In fact, one Fixed Service commenter opposed the allocation of the 3650 - 3700 MHz band, believing that allocation of such a small spectrum block "would discourage rather than encourage the near term introduction of wireless technologies to meet the current and future data bandwidth challenges."[8] Other Fixed Service commenters observed that terrestrial wireless use is not inherently incompatible with FSS use, and it would be appropriate to explore sharing opportunities between these services, as well as alternative allocation schemes.[9]

On the other hand, members of the Coalition were unanimous in their concern that the Commission might adopt a Fixed Service allocation that would preclude future FSS use of

---

5 *See NPRM,* 14 FCC Rcd at 1295 (¶ 2).

6 *See* Cheyenne River Sioux Telephone Authority Comments at 4-5; SR Telecom, Inc. Comments at 6-7. All references to comments filed in this motion are to the initial round of comments in ET Dkt. No. 98-237 filed on or about February 16, 1999.

7 *See* Lucent Technologies Comments at 5; SBC Communications, Inc. Comments at 2. Both of these commenters suggest that it might be more appropriate for the Commission to look to the 3400 - 3600 MHz band for FWA use.

8 Airspan Communications Corporation Comments at 1.

9 For example, Northern Telecom, Inc. ("Nortel") noted that "[s]tudies are well-advanced in ITU-R WP 4-9S to determine the criteria for sharing in these frequencies between the fixed service, including FWA applications, and the fixed satellite service." Nortel Comments at 6. Comsearch, an independent engineering firm that coordinates spectrum use among Fixed Service and FSS licensees at C-band, also observed that the Commission was incorrect to imply that FSS Earth station facilities require large exclusion zones in which no Fixed Service facility can co-exist. *See* Comsearch Comments at 2.

the 3650-3700 MHz band.[10] They emphasized that there are legitimate prospects for sharing among Fixed Service and FSS users of these bands,[11] and that TT&C use would require only a relatively small number of rather widely dispersed earth station facilities.[12] The preponderance of the FSS comments indicated that the Commission had prematurely and arbitrarily concluded that it needed to foreclose future co-primary FSS use of the 3650-3700 MHz band through the establishment of rules that overwhelmingly favored an as-of-yet unidentified wireless application over identified existing and future satellite applications.

Fourteen months after the initial comment period concluded, and only after vigorous protest from the members of the Coalition, the Commission relented slightly on its application freeze and provided some limited relief in the face of the hardship being experienced by international satellite service providers and operators. In place of the freeze, the Commission adopted a new policy that would permit applications for major modifications to existing grandfathered sites, and for new extended C-band earth station receive sites – but only for those located within ten miles of an existing grandfathered extended C-band earth station receive site.[13] The areas where new and modified earth stations were deemed permitted are located in just sixteen states plus Puerto Rico and Guam, and in some cases do not include the entire 50 MHz of spectrum at 3650-3700 MHz.[14]

---

10 *See* Comsat Corporation ("Comsat") Comments; EchoStar Communications Corporation Comments; GE American Communications, Inc. Comments; Globecast North America Incorporated Comments; Hughes Communications, Inc. Comments; Loral Space & Communications, Ltd. ("Loral") Comments; New Skies Satellites N.V. Comments; PanAmSat Corporation Comments; Satellite Industry Association ("SIA") Comments; Sprint Corporation Comments.

11 *See, e.g.,* Comsat Comments at 12-15; Loral Comments at 7-8.

12 *See* Joint Comments of TRW and Lockheed Martin at 7.

13 *See Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band*, 15 FCC Rcd 9340 (2000) ("*May 2000 MO&O*").

14 *Id.* at Appendix A.

In its *First Report and Order,* the Commission acted on its original proposal, allocating the 3650-3700 MHz band to the Fixed and Mobile (base stations) terrestrial services on a primary basis, while continuing limited grandfathering of existing FSS earth station sites in this band at their assigned frequencies only. In addition, the Commission re-imposed most of the key provisions of its earlier freeze, stating that it would only accept new applications for co-primary FSS earth stations within ten miles of the grandfathered sites until November 30, 2000.[15] Any earth station application filed after that date could still be processed, but, regardless of its proximity to a previously licensed site, would be eligible to operate on a secondary basis only vis-à-vis the Fixed Service. Moreover, to retain grandfathered status, any station authorized would need to be completely constructed and operational within one year of the initial authorization, and not have made modifications other than those classified by the Commission as minor in nature.[16] Accordingly, the rulemaking petition filed in 1997 seeking access to this band for satellite TT&C was dismissed in part, concerning the request to allow FSS licensees with systems that operate outside the 3650-3700 MHz band to use the band for TT&C, and denied in part, with respect to a reservation of 10 MHz of spectrum to be used exclusively for TT&C operations.[17]

III. ARGUMENT

The standard governing requests for the grant of a stay is well established. A movant must establish that: (1) there is a substantial likelihood that it will ultimately succeed on the merits of the matter at issue; (2) irreparable harm would result to the movant in the absence

---

15 *See First Report and Order*, FCC 00-363, slip op. at 14 (¶ 29).

16 *Id.*

17 *Id.* at 15-16 & 56 (¶¶ 32-33 & 147).

of a stay; (3) injunctive relief would not substantially harm other parties; and (4) a stay would be in the public interest, or at least would not be adverse to the public interest.[18] These factors are not viewed in absolute terms, but must be viewed in relationship to each other — such that a very strong showing under one or more factors may compensate for a less substantial showing under another factor. Thus, the *Holiday Tours* Court concluded as follows:

> An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant. There is substantial equity, and need for judicial protection, whether or not movant has shown a mathematical probability of success.[19]

In the matter now brought before the Commission, each of the *Holiday Tours* factors is met, fully justifying a stay. Moreover, whether or not the Commission ultimately agrees with the Coalition that there is justification to reconsider key aspects of its Order, the remaining three factors all strongly support the grant of a stay.

A. <u>Likelihood of Success on the Merits.</u>

While the Commission undeniably has broad discretion in establishing guidelines for spectrum use, there are significant aspects of the Commission's *First Report & Order* that are disturbingly arbitrary or lacking in explanation, and therefore render it likely that the Commission may well revisit its approach on reconsideration. Among the anomalies is the fact that the Commission determined that the ability of FSS operators to file applications for new extended C-band facilities should be cut-off as of November 30, 2000, a date long before the final rules adopted would even become effective. (The effective date was established elsewhere

---

[18] *See, e.g, Washington Metro Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-844 (D.C. Cir. 1977) ("*Holiday Tours*"); *Virginia Petroleum Jobbers Ass'n v. F.P.C.*, 259 F.2d 921, 925 (D.C. Cir. 1958).

[19] *Holiday Tours*, 559 F.2d at 844.

in the Order as ninety days after publication of the Order in the *Federal Register.*)[20] No basis was provided for this arbitrary deadline, which was supported solely by the generalized desire "to establish a limit on the acceptance of [FSS earth station] applications and on the construction of FSS facilities."[21] No reasoning was offered as to why this cut-off should occur before any of the other new rules established by the Commission has become effective.

Federal Register publication has now occurred, and the effective date of the rules has now been established as February 15, 2001 – two and one-half months after the deadline for FSS earth station filings under the grandfathering provisions of the *First Report and Order.*[22] A secondary effect of this timing is that the date established even for seeking formal Commission reconsideration of the Order does not occur until more than two weeks after the application deadline, so that the rights of FSS earth station operators to seek co-primary operating status are extinguished before the Commission would even begin to undertake a review of its action.

Moreover, there are substantial grounds based on the record of this proceeding for modification of the Commission's approach on reconsideration. The *First Report and Order* fails either to explain adequately rationales behind specific actions or to address certain issues placed squarely before the Commission by commenters. For example, there is no logical rationale given for the Commission's decision to treat applications for earth stations located within ten miles of an existing grandfathered extended C-band site submitted after November 30, 2000 less favorably than those received before. The ten-mile radius was also determined in a manner that, in the absence of technical sharing studies, appears to be arbitrary. Any such application filed within this ten-mile radius – whether filed before, on or after November 30 – would impose no greater limitation on potential Fixed Service deployment than would be

---

20 *See First Report and Order*, FCC 00-363, slip op. at 56 (¶ 145).

21 *Id.* at 14 (¶ 29).

22 *See* 65 Fed Reg. 69451 (November 17, 2000).

expected from the existing earth station facilities. Application of secondary status to an earth station site located within this ten-mile radius would appear arbitrary upon reconsideration of the matter.

As another example, the Commission itself had acknowledged in its original *NPRM* that its March 1996 *Plan for Reallocated Spectrum* identified the 3650 - 3700 MHz band ***as a candidate band for increased use by non-Government FSS systems***.[23] The Commission specifically noted at that time that it already had an application on file proposing to utilize these frequencies for TT&C for a direct broadcast satellite, indicating significant satellite industry interest in using this band.[24] Indeed, in light of the 1996 plan, some satellite operators subsequently constructed and launched geostationary satellites that were designed to provide services in the 3650-3700 MHz band.[25] Nowhere in the Order does the Commission describe any changes in circumstance or spectrum demand that would justify the complete abandonment of its 1996 approach.

In addition, the limitations placed on this band undercut international actions that the U.S. has previously taken to secure access to this spectrum for use in conjunction with the various Ka-band and V-band systems. The Commission itself long ago filed advance publication and coordination materials with the International Telecommunication Union ("ITU") that state the intent of the United States to use the extended C-band spectrum in the range 3650-3700 MHz to satisfy TT&C requirements for both geostationary and non-geostationary satellites in the Ka-band and V-band. Indeed, this band was the only portion of the extended C-band downlink advance published by the U.S. for commercial Ka- and V-band systems. The designation of

---

23 *See Plan for Reallocated Spectrum*, 11 FCC Rcd 17841, 17871 (¶ 54) (1996) ("*Band Reallocation Plan*").

24 *Id.*

25 For example, the NSS-803 (launched September 1997) and NSS-806 (launched February 1998) satellites operate in the United States to provide international services using the 3650-3700 MHz band. These satellites have perhaps a *decade* of remaining useful life.

appropriate spectrum for TT&C operations is critical to facilitate deployment of broadband satellite systems that will operate in the Ka-band and higher frequencies – systems that hold the promise of fulfilling critical Commission and Congressional goals, pursuant, for example, to Section 706, with respect to the broad availability of advanced telecommunications services to US consumers nationwide.[26]

The Commission also gives short shrift in its Order to comments from both FSS and Fixed Service commenters suggesting that sharing of the extended C-band between these services is possible. The technical characteristics of the potential terrestrial services that may be provided in the 3650-3700 MHz band have not yet been determined, and thus the potential for sharing has not been studied. Certain, and perhaps all, FSS applications could still be provided after the introduction of terrestrial services, depending on the specific technical characteristics of each application. The nature of TT&C downlinks, for example, requires only a small number of widely separated earth station facilities using a very limited amount of spectrum at any given site. Additionally, "gateway" type FSS uses might still be possible to enable the reception of wideband data carriers for the delivery of Internet services. Commenters observed that it is, therefore, possible for the Commission to derive limits or coordination approaches for the 3650-3700 MHz band that would apply to terrestrial and/or satellite users and enable certain types of wireless and satellite applications to co-exist on a co-primary basis through band segmentation or geographic separation.[27] At a minimum, the Commission should have undertaken a careful examination of the prospects for co-frequency use by FSS and Fixed Service facilities as part of this proceeding. Instead, it dismissed the possibility of spectrum sharing in a conclusory manner,

---

26 *See, e.g., Extending Wireless Telecommunications Services To Tribal Lands*, 15 FCC Rcd 11794, 11812 (¶ 50) (2000) ("satellites are an excellent technology for delivering both basic and advanced telecommunications services to unserved, rural, insular or economically isolated areas").

27 *See* TRW and Lockheed Martin Joint Comments at 7.

stating that "allowing FSS *on an unrestrained co-primary basis* would impede any potential widespread use of the band for terrestrial services."[28] This statement begs the question of what steps short of "unrestrained co-primary" access for FSS operations might reasonably be established without taking the heavy handed step of relegating satellite use to secondary status. Before the Commission takes this extraordinary step, these technical issues ought to be addressed to see if sharing of spectrum is technically feasible.

Finally, the Commission notes in its Order that a recently adopted change in the law precludes the FCC from assigning spectrum for international or global satellite services by competitive bidding.[29] While not explicitly linking this provision with its actions in this proceeding, the Commission notes in the same paragraph the severe limitations it is placing on new satellite use of the band, and elsewhere in its Order proposes that Fixed Service authorizations will be assigned in this band exclusively through auctions. This action sharply limiting FSS spectrum use, and declining to consider potential means of greater FSS/Fixed Service sharing – despite comments from both industries suggesting that such sharing is possible and should be explored – suggests a potential bias against satellite spectrum use that may be contrary to the Communications Act. In particular, the statutory provisions that authorize the Commission to employ auctions as a means of spectrum assignment specifically provide that the Commission may not premise spectrum allocation decisions on the expectation that certain uses may generate Federal revenues.[30]

---

28 *See First Report and Order*, FCC 00-363, slip op. at 10 (¶ 18) (emphasis added).

29 *Id.* at 11-12 (¶ 21).

30 *See* 47 U.S.C. § 309(j)(7)(A).

B. Members of the Coalition Will Be Irreparably Harmed Absent a Stay.

The members of the Coalition will suffer substantial and irreparable harm if the filing window for new and modified earth station facilities in the extended C-band is not stayed immediately. As noted above, the date established for seeking Commission reconsideration in this proceeding does not even occur until more than two weeks from the FSS earth station filing deadline, so that there is no opportunity even to commence review of the terms of the *First Report and Order* before the rights of FSS earth station operators to seek co-primary operating status are extinguished.[31]

Furthermore, the *Further Notice of Proposed Rulemaking* that is part of the Commission's Order solicits additional comment on the appropriate handling of requests to operate TT&C facilities within the 3650-3700 MHz band in connection with systems that operate outside of C-band.[32] The November 30 deadline for filing earth station applications eligible for grandfathered status thus puts potential applicants in the ambiguous position of not knowing what requirements may be applied to them, while at the same time facing a deadline after which any new facilities would be relegated to secondary status. This Catch-22 circumstance either compels applicants to seek authority in the absence of clear rules or relegates them to permanent secondary status in a frequency band that is uniquely suited for the type of mission critical TT&C use proposed by a number of satellite operators. Loss of access to this band would leave these companies without comparable alternatives.

---

[31] While the Coalition or any of its members could have filed a Petition for Reconsideration prior to or contemporaneously with the filing of this Emergency Motion, as a practical matter, no Commission reconsideration of these issues would actually be initiated until the full period for filing petitions for reconsideration has lapsed.

[32] *See First Report and Order*, FCC 00-363, slip op. at 51-52 (¶¶ 129-132).

C. A Stay Of The Commission's Deadline for Filing New Satellite Applications for Extended C-Band Facilities Will Not Cause Any Harm To Other Parties.

Grant of the stay requested by the Coalition will not cause harm to other parties, as it will merely preserve the *status quo,* and no entity has a generalized interest in the particular processing status that is accorded to future FSS earth station applications. The *status quo* with respect to extended C-band application processing is defined by the Commission's *May 2000 MO&O* in which it stated that the limited relief it was adopting would address the need for satellite operators to access the extended C-band "without jeopardizing its future availability for terrestrial users."[33] In view of this determination, premised on the already circumscribed nature of available satellite use of this band, there would not appear to be any basis for cutting off co-primary satellite operations prior to the final adoption of service rules.

Moreover, although Fixed Service operators may gain authority in the future to operate in this band by procuring licenses through auction, none currently has a particularized interest in any part of this spectrum. Rules for allotment and assignment of this spectrum for fixed wireless access have yet to be established, and it clearly will be some time before the terms and conditions of operation will be finalized. For this reason, no entity will suffer any specific injury as the result of acceptance of additional FSS earth station applications on a primary basis. Indeed, as discussed in the following section, delaying the deadline for seeking authorization for FSS earth stations may ultimately result in fewer, more narrowly tailored requests for satellite downlink operation in this band.

---

[33] *See May 2000 M0&0,* FCC 00-181, slip op. at 3 (¶ 4).

D. A Stay Of The Filing Deadline Would Promote The Public Interest.

A stay of the filing deadline would also serve the public interest by preserving the regulatory *status quo* and thereby maintaining the orderliness of the Commission's processes. The natural impact of any arbitrary cut-off date is to stimulate new applications to take advantage of any grandfathered status that is available. Thus, the establishment of a hasty deadline – under which there is little time for careful evaluation of available options – is likely to spark a significant number of applications designed to preserve whatever legitimate rights of use may be retained. Some applicants might conclude, with greater time to weigh their options, that no application is warranted, or that a limited amount of spectrum, or even alternative spectrum, would be sufficient to meet their needs. In addition, careful Commission reconsideration of the issues in this proceeding could result in a more equitable approach for future co-primary use of the extended C-band that would alter the need for applicants to take advantage of the instant grandfathering.

IV. CONCLUSION

On the basis of the foregoing discussion, the Coalition urges the Commission to determine that good cause exists to stay pending final action on petitions for reconsideration the deadline for submission of satellite earth station applications for the 3650 – 3700 MHz band that will be entitled to co-primary protection from co-frequency Fixed Service interference. **The Coalition respectfully urges the Commission to act with expedition on this request, and to issue an order on this Emergency Motion for Stay on or before December 1, 2000.**

Respectfully submitted,

EXTENDED C-BAND AD HOC COALITION

By: _____

Stephen D. Baruch
David S. Keir

Leventhal, Senter & Lerman, PLLC
2000 K Street, N.W., Suite 600
Washington, D.C. 20006
(202) 429-8970

November 28, 2000

Its Attorneys

Federal Communications Commission

The FCC Acknowledges Receipt of Comments From ...

The Extended C-Band Ad Hoc Coalition

...and Thank You for Your Comments

Your Confirmation Number is: '20001128534069 ' 1

Date Received: Nov 28 2000

Docket: 98-237

Number of Files Transmitted: 1

File Name	File Type	File Size (bytes)
MOTION	Microsoft Word	71169

Initiate a Submission | Search ECFS | Return to ECFS Home Page

FCC Home Page | Search | Commissioners | Bureaus/Offices | Finding Info

updated 07/07/00

CERTIFICATE OF SERVICE

I, Barbara Robinson, do hereby certify that a true copy of the foregoing Extended C-Band Ad Hoc Coalition Emergency Motion for Stay Pending Reconsideration was filed electronically with the Federal Communications Commission on the 28th day of November 2000 and was hand delivered this 29th day of November, 2000 to each of the following:

Chairman William Kennard
Federal Communications Commission
445 12th St., SW
Room 8-B201
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th St., SW
Room 8-B115
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th St., SW
Room 8-C302
Washington, DC 20554

Rodney Conway
Office of Engineering & Technology
Federal Communications Commission
445 12th St., SW
Room 7-A132
Washington, DC 20554

Don Abelson
Room 6-C752
Thomas Tycz
Room 6-A665
Fern Jarmulnek
Room 6-A523
International Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th St., SW
Room 8 -A302
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th St., SW
Room 8-A204
Washington, DC 20554

Christopher Wright
Office of General Counsel
Federal Communications Commission
445 12th St., SW
Room 8-C755
Washington, DC 20554

Karl Kensinger
International Bureau
Federal Communications Commission
445 12th St., SW
Room 6-A663
Washington, DC 20554

Thomas Sugrue
Room 3-C252
Eli Johnson
Room 3-B114
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Barbara Robinson

Doc No. 145264.v1