

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
FWCC Request for Declaratory Ruling on	)	
Partial Band Licensing of Earth	)	IB Docket No. 00-203
Stations in the Fixed-Satellite Service	)	RM-9649
That Share Terrestrial Spectrum	)	
	)	
FWCC Petition for Rulemaking to Set	)	
Loading Standards for Earth Stations	)	
In the Fixed-Satellite Service that	)	
Share Terrestrial Spectrum	)	
	)	
Onsat Petition for Declaratory Order that	)	
Blanket Licensing Pursuant to Rule 25.115(c)	)	SAT-PDR-19990910-0091
Is Available for Very Small Aperture	)	
Terminal Satellite Network Operations at C-	)	
Band	)	
	)	
Onsat Petition for Waiver of Rule 25.212(d)	)	
To the Extent Necessary to Permit Routine	)	
Licensing of 3.7 Meter Transmit and Receiver	)	
Stations at C-Band	)	
	)	
<i>Ex Parte</i> Letter Concerning Deployment of	)	
Geostationary Orbit FSS Earth Stations in the	)	
Shared Portion of the Ka-band	)	

To: The Commission

**COMMENTS OF**  
**WINSTAR COMMUNICATIONS, INC.**

Pursuant to Section 1.415 of the rules of the Federal Communications Commission (“FCC” or “Commission”), Winstar Communications, Inc. (“Winstar”) hereby submits these

comments in the above-captioned proceeding.<sup>1</sup> Winstar generally supports the positions of the Fixed Wireless Communications Coalition (“FWCC”) in this matter and the FCC’s efforts to make sharing more equitable between fixed service (“FS”) terrestrial microwave facilities and fixed satellite service (“FSS”) earth stations. However, and as discussed below, Winstar urges the Commission to clarify that the instant proceeding only applies to those “shared” FS-FSS bands in which the Commission actually has licensed and established technical rules for both FS and FSS operations on a co-primary basis. The proposals discussed within this proceeding must not be extended to bands, such as the 27.5-29.5 GHz and 38.6-40.0 GHz bands, which the FCC already has primarily designated for terrestrial wireless or FS operations. Finally, Winstar urges a clarification of the FCC proposal at paragraph 31 of the NPRM to require an FS licensee that accepts a particular interference analysis model for a successful coordination to accept use of the same model in subsequent coordinations.<sup>2</sup> Specifically, Winstar urges the FCC to clarify that this requirement extends to future coordinations *for that specific station only*.<sup>3</sup>

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<sup>1</sup> Notice of Proposed Rulemaking, IB Docket No. 00-203, FCC 00-369 (rel. Oct. 24, 2000) (“NPRM”).

<sup>2</sup> Id. at ¶ 31.

<sup>3</sup> In the NPRM at paragraph 30, the FCC also requested comment on how its proposals in the Part 101 rulemaking to consider auctioning of geographic area licenses for fixed microwave facilities would affect the nature and extent of the current FS and FSS sharing situation. (Reorganization and Revision of Part 1, 2, and 95 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, Memorandum Opinion and Order and Notice of Proposed Rulemaking, WT Docket No. 94-148, FCC 00-33 (rel. Feb. 14, 2000.)) Winstar believes that is too premature, and indeed too difficult, to address this issue as most of the parties in the Part 101 proceeding, including Winstar, have opposed the proposal to impose auctions on the FS point-to-point bands and a final Part 101 order has yet to be issued. If the Commission decides to set forth an auction policy, parties should

## **Background**

1. Winstar is a national facilities-based broadband services company offering local and long distance telecommunications, high-speed Internet, and data services. It provides these services through a variety of technologies, including its fixed wireless systems that operate pursuant to exclusive, area-wide licenses in the 38.6-40.0 GHz band (the “39 GHz band”) and in the Local Multipoint Distribution Service or “LMDS” (27.5-29.5 GHz and 31 GHz) bands. Winstar is the largest holder of 39 GHz spectrum in the country, and, as a result of the 39 GHz spectrum auction held last year, the company now is licensed for virtually ubiquitous broadband spectrum coverage throughout the entire United States. Winstar also holds spectrum in a number of point-to-point bands, including the 6 GHz, 10 GHz and 18 GHz bands.

## **Discussion**

2. Winstar commends the Commission for proposing to adopt rules directed at addressing concerns raised by FWCC and others about effective and equitable use of spectrum bands shared by the FS and FSS on a co-primary basis. However, Winstar is concerned that the request for comment is not sufficiently qualified as to whether the FCC’s proposed changes to Part 25 and 101 rules should apply in other bands where the FSS and FS “share” spectrum.<sup>4</sup> Specifically, the Commission has failed to sufficiently clarify the distinction between (1) bands in which the Commission actually has licensed and established technical

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have an opportunity to review the sharing policies at issue herein within the context of the specific auction procedures adopted by the Commission at that time.

<sup>4</sup> See NPRM at ¶¶ 8, 16, 31 and 55.

rules for both FS and FSS operations on a co-primary basis, and (2) bands that may be *allocated* on a co-primary basis to both the FS and FSS but are not in fact *shared* on a co-primary basis. Winstar is referring specifically to the 39 GHz band and a portion of the LMDS band: 27.5-28.35 GHz.<sup>5</sup>

3. While these two bands may be allocated on a co-primary basis to both the FS and FSS pursuant to section 2.106 of the FCC's rules, the Commission already has established that the FS has primarily designated use of the 39 GHz band and the 27.5-28.35 GHz portion of the LMDS band. Consequently, the proposed changes to Part 101 and Part 25 discussed in the NPRM must not be extended to either of these bands, and should not in fact be subject to comment within the context of this rulemaking.

4. While not a main point of these Comments, Winstar notes that the Commission has in various parts of the NPRM suggested that portions of the 18 GHz band could be subject to this proceeding.<sup>6</sup> The NPRM also inexplicably, perhaps unintentionally, implies that only FS operators have suggested that spectrum in the 18 GHz cannot be shared, and that this position is still in the Notice of Proposed Rulemaking stage.<sup>7</sup> The Commission is directed to the Report and Order in IB Docket No. 98-172 in which it noted that the "vast majority of commenters agreed with our tentative conclusion that co-frequency sharing between terrestrial fixed service [FS] and ubiquitously deployed FSS earth stations in the 18 GHz band

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<sup>5</sup> Winstar notes that another portion of the LMDS band (29.1-29.25 GHz) already is subject to extensive coordination procedures designed to protect FS and mobile satellite service ("MSS") interests on an equitable basis.

<sup>6</sup> NPRM at ¶¶ 16 and 23.

<sup>7</sup> Id. at ¶ 23, n.36.

is not feasible, and that the public interest would be best served by separating these operations into dedicated sub-bands.”<sup>8</sup> This existing FCC position seems to beg the question why it then has been suggested that the 18 GHz band could be a subject of this rulemaking since much of that band no longer will be shared on a co-primary basis.

5. With respect to the 39 GHz band, in the V-band Order, the Commission found that ubiquitous terrestrial wireless systems and satellite systems would have technical difficulties in sharing the same spectrum.<sup>9</sup> As a result, the Commission concluded that designating separate spectrum for FSS and terrestrial wireless services would provide licensees “the best opportunity to operate free of interference and [would] encourage commercial development of this band.”<sup>10</sup> As part of its band plan, the Commission primarily designated the 39 GHz band for terrestrial wireless operations.<sup>11</sup>

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<sup>8</sup> Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3-17.8 GHz and 24.75-25.25 GHz Frequency Bands for Broadcast Satellite-Service Use, Report and Order, IB Docket No. 98-172, FCC 00-212, at ¶ 17 (rel. June 22, 2000).

<sup>9</sup> Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations, Report and Order, 13 FCC Rcd 24649, at ¶¶ 13 and 18 (1998) (“[w]e conclude that the public interest is best served by providing separate primary designations for FSS and wireless services because of the technical difficulties in sharing.”) (“V-band Order”).

<sup>10</sup> Id. at ¶ 18.

<sup>11</sup> Id. at ¶ 35. The Commission has left open the possibility that FSS operators could provide service in the 39 GHz band “through a license won at auction (thereby becoming a wireless licensee) or through a post-auction arrangement with a winning bidder.” Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5-38.5 GHz, 40.5-41.5 GHz, and 48.2-50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile

6. Based on these FCC decisions, incumbent fixed wireless providers have invested enormous sums to construct, market and operate their systems in the 39 GHz band. In addition to long-standing and growing network deployments in incumbent 39 GHz rectangular service area (“RSA”) license areas, fixed wireless providers successfully bid over \$400 million for over 2,000 Economic Area (“EA”) licenses in the recent 39 GHz auction.<sup>12</sup> The successful bidders did so based upon the FCC's stated policy that fixed wireless licensees would be able to develop their commercial operations fully without harmful interference from satellite operations in the 39 GHz band.

7. The arguments set forth above with respect to the 39 GHz band similarly apply to the consideration of the 27.5-28.35 GHz portion of the LMDS band within the context of this rulemaking. In CC Docket No. 92-297, the Commission ruled that the 27.5-29.5 GHz band would be segmented to ensure that the FS and FSS services could operate on a non-interference basis. “At 27.5-28.35 GHz we [the FCC] designate 850 MHz for LMDS on a primary basis. GSO/FSS or NGSO/FSS systems will be permitted on a non-interfering basis to the LMDS systems in the 850 MHz band segment, for the purpose of providing limited

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Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations, Order on Reconsideration, 15 FCC Rcd 1766, at ¶ 9 (1999). However, to date the Commission has not held additional proceedings to define the specific parameters by which satellite services would operate in this band in light of its earlier decision to primarily designate the 39 GHz band for FS services.

<sup>12</sup> Winstar notes that one company, TRW, was a high bidder in the 39 GHz auction and has requested a waiver of the Part 101 rules to allow it to provide satellite services in this band within its licensed service area. It is Winstar’s understanding that the TRW waiver request remains pending, and that TRW, to date, has not yet received any licenses in the 39 GHz band.

gateway-type services.”<sup>13</sup> While the 27.5-28.35 GHz band may be “shared” in the sense that there is a co-primary allocation in the table of allocations, the FCC has primarily designated the band for FS operations.<sup>14</sup> Consequently, the proposed changes to Part 101 and Part 25 discussed in the NPRM must not be extended to the 27.5-28.35 GHz band, and indeed the band should not be subject to comment within the context of this rulemaking.

8. Finally, on a separate matter, Winstar urges a clarification of the FCC proposal to require an FS licensee that accepts a particular interference analysis model to coordinate successfully the location of a station to accept use of the same model in subsequent coordinations.<sup>15</sup> Specifically, Winstar urges the Commission to clarify that this requirement extends to future coordinations *for that specific station only* by making a slight addition to its proposed section 101.103(d) by adding “for that station” at the end of the sentence.

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<sup>13</sup> Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission’s Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, First Report and Order and Fourth Notice of Proposed Rulemaking, FCC 96-311 (rel. July 22, 1996), at ¶ 45 (emphasis added); see also 47 C.F.R. § 101.1005.

<sup>14</sup> Additionally, the LMDS band is heavily licensed by the FS as a result of two FCC auctions that collectively raised over \$620 million.

<sup>15</sup> NPRM at ¶ 31.

**WHEREFORE, THE PREMISES CONSIDERED,** Winstar Communications, Inc.  
requests that the Commission issue a final order in this proceeding consistent with the  
positions set forth above.

Respectfully submitted,

**WINSTAR COMMUNICATIONS, INC.**

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