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January 8, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
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The Portals
Washington, DC 20554

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JAN - 8 2001

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: IB Docket No. 00-203

Dear Ms. Salas:

Please find attached a diskette copy of the Comments of Loral Space & Communications Ltd., filed today in the above-referenced docket. The diskette is formatted in an IBM compatible form using Word 97 software and is being submitted in "read only" mode.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



Jennifer D. McCarthy

Attachment: diskette

cc: ITS, Inc.

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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
FWCC Request for Declaratory Ruling on)
Partial-Band Licensing of Earth Stations in the)
Fixed-Satellite Service 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) 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 Receive Stations at)
C-Band)
)
Ex parte Letter Concerning Deployment of)
Geostationary Orbit FSS Earth Stations in the)
Shared Portion of the Ka-Band)

IB Docket No. 00-203
RM-9649

RECEIVED

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

SAT-PDR-19990910-00091

COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.

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January 8, 2001

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SUMMARY

Loral Space & Communications Ltd. (“Loral”) opposes the new satellite/terrestrial spectrum coordination rules proposed by the Commission in response to petitions filed by the Fixed Wireless Communications Coalition. The record contains no support for the FWCC’s claims that fixed services licensees have been disadvantaged when coordinating shared spectrum with FSS earth station licensees. To the contrary, the record demonstrates that the Commission’s current coordination procedures work and need not be changed. Terrestrial and satellite operators provide very different services and are licensed accordingly. The Commission’s rules and policies permitting full-band, full-arc licensing for earth stations reflect the need of such stations for frequency agility to meet changing satellite configurations and customer demand. This flexibility is essential for both the day-to-day operations of earth station and satellite operators as well as emergencies.

The “demonstrated use” requirement proposed by the Commission will severely undermine the policy objectives of the current rules by depriving earth station operators of access to coordinated spectrum and denying essential services to the public. Developing any set of criteria to define “use” would be incredibly complex. Any demonstration of use would require the disclosure of competitively sensitive company information to frequency coordinators that often represent satellite operators’ competitors as well as fixed service operators. Loral also objects to the Commission’s proposals to modify the way coordinations affect subsequent coordinations. These proposals ignore the cumulative effects of successive coordinations and are unsound.

Loral supports the Commission’s proposals regarding the Onsat Petition for Declaratory Order but suggests that the Commission clarify that CSAT operators be permitted to choose any three satellites or orbital locations. Further, Loral believes that the Commission should not limit CSAT service to rural areas but should instead permit such service wherever frequency coordination allows the installation of a CSAT earth station.

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COMMENTS OF LORAL SPACE & COMMUNICATIONS LTD.

Loral Space & Communications Ltd. (“Loral”), by its attorneys, submits these comments in the above-referenced proceeding. The burdensome new satellite/terrestrial spectrum coordination rules proposed by the Commission in response to the issues raised in the Fixed Wireless Communications Coalition (“FWCC”) Petition for Declaratory Ruling and Petition for Rulemaking are unworkable solutions in search of a non-existent problem.¹ Loral supports the

¹ Request for Declaratory Ruling and Petition for Rulemaking of the Fixed Wireless Communications Coalition (filed May 5, 1999) (“FWCC Petitions”).

Commission's proposals regarding the Onsat Network Communications Petition for Declaratory Order with some clarifications.

I. INTRODUCTION

The record before the Commission contains no evidence that fixed service ("FS") licensees have been disadvantaged when sharing bands with fixed-satellite service ("FSS") licensees. As the oppositions filed in response to the FWCC Petitions demonstrate, the FCC's current rules properly balance the different needs of the FS and FSS services and provide for efficient use and practical coordination of shared spectrum.² In addition, the record establishes that coordination between services has consistently and fairly been accomplished under existing procedures. If adopted, the new coordination rules would impose extraordinary burdens on the satellite and earth station industry and the Commission. The proposals are simply unnecessary and should not be adopted.

Loral, like all other satellite operators, has a substantial interest in the instant proceeding. Loral, like many other satellite and earth station operators, utilizes and has invested substantially over many years in a business using frequencies in the C-, Ku- and Ka-bands that are shared on a co-primary basis with the terrestrial fixed service. It maintains a fleet of C- and Ku-band satellites, holds authorizations for a Ka-band satellite system and is an applicant for a V-Band system. Loral's operational satellites are accessed by thousands of earth stations worldwide. Loral itself holds numerous licenses for earth stations which are used for the provision of both domestic and international services to its customers as well as operational functions such as launch control, TT&C and service monitoring. Certain of Loral's earth stations are incorporated

² No one filed comments in support of the FWCC's Petitions. Only one entity, the Telecommunications Industry Association Fixed Point-to-Point Communications Section of the Wireless Communications Division, filed reply comments in support of the FWCC's Petitions.

into a large teleport facility which provides service to hundreds of customers using multiple satellites, both foreign and domestic, over a wide range of orbital locations and frequencies. As discussed below, the FCC's coordination proposals would severely impair Loral and its customers' ability to provide services. Neither the FWCC nor the Commission has shown how the public interest would be served by adopting these proposals.

II. THE FCC'S CURRENT RULES WORK AND REFLECT THE UNIQUE OPERATIONAL AND TECHNICAL CHARACTERISTICS OF TERRESTRIAL AND SATELLITE SERVICES

The FWCC alleges that notwithstanding the fact that the Commission's rules already require the sharing of FS and FSS spectrum on a co-primary basis, sharing has not occurred on an "equitable" basis.³ However, the record does not support the FWCC's claims that the FCC's policies unfairly disadvantage terrestrial operators and the FWCC provides no evidence of specific instances where this has occurred. To the contrary, the record establishes that the current sharing and coordination process works.⁴ There is no factual basis to support adoption of the new coordination proposals set forth in the NPRM.

The Commission seeks comment on the "extent of the FS and FSS sharing problem."⁵ Loral's view is that there is no sharing problem and therefore no need to revise the Commission's rules to address imaginary ills. In shared frequency bands, Loral makes great efforts to select sites and frequencies for its earth stations so as to minimize the possibility of

³ NPRM at ¶ 5.

⁴ See e.g., Opposition of GE Americom Communications at 8-9 (filed July 12, 1999); Opposition of the Satellite Communications Division of the Telecommunications Industry Association at 1-2 (filed July 12, 1999); Opposition of the Satellite Industry Association at 6 (filed July 12, 1999); Opposition of Comsat at 12-14 (filed July 12, 1999); Reply and Opposition of MCI Worldcom at 4 (filed July 26, 1999).

⁵ NPRM at ¶¶ 7, 30.

interference. For example, in many cases, Loral specifically locates its earth stations in valleys or mountainous areas so that the stations will not receive or cause interference to other services. Loral Skynet® has more than twenty years of experience in coordinating FSS earth stations and FS station facilities in shared bands. In every case Loral has been able to reach a satisfactory coordination agreement with a fixed service licensee.

Satellite and terrestrial operators provide very different services and employ radically different technologies. Accordingly, the Commission has established distinct licensing approaches for these two services. These rules were developed and implemented by the Commission over many years to reflect the architectural and operational differences between terrestrial and satellites services while promoting efficient use of spectrum by both services. For example, the Commission’s rules permit, and its established practice has been to provide, full-band, full-arc licensing for satellite earth stations.⁶ Terrestrial operators are licensed on discrete paths at specific frequencies.

The Commission’s current licensing distinctions are not based on any preference for satellite services. They recognize the critical technical differences in how satellite and terrestrial services use their spectrum. The rationale for the Commission’s policy of full-band earth station licensing is the satellite industry’s need for operational flexibility. For example, earth station operators frequently must change communications paths to alternate satellites and transponders to meet rapidly changing customer and operational requirements.⁷ Licensing earth stations for

⁶ However, it is important to note that the Commission will only license the entire allocated band if the earth station applicant has demonstrated that it has coordinated all frequencies with existing FS licensees.

⁷ Loral is a member of the Satellite Industry Association (“SIA”) and joins in the separate comments being filed by SIA. The SIA comments provide additional detail and examples regarding the satellite industry’s need for frequency agility for the duration of an earth station license term.

the full band provides licensees with “the needed flexibility to change transponders or satellites on short notice, and without having to be re-licensed by the Commission, to meet changing operational requirements.”⁸

In this proceeding, the Commission inexplicably ignores the rationale underlying its well established and successful coordination and licensing policies and proposes radical and unnecessary changes to its rules. The proposed rules would eliminate the flexibility that is essential to the satellite services business. As noted in the NPRM, the ability to change frequencies within a band is essential to permit an earth station operator to respond quickly to any changes in a satellite’s capabilities or to customer demand.

Satellite and earth station operators require such frequency agility for their day-to-day operations. For example, many of Loral’s customers are broadcasters, providing instantaneous coverage of breaking news, weather-related emergencies, entertainment, political and sporting events, among others. These clients have multiple antennas which can be steered to any licensed satellite positioned in the orbital arc in less than two minutes. Indeed, they often switch from satellite to satellite during commercial breaks. Broadcasters rely on Loral and other satellite operators’ ability to provide access to transponders around the world and to use a broad range of frequencies, sometimes on a moment’s notice. Absent the flexibility to switch from one frequency to another based on transponder availability and location, the ability of broadcasters to provide live or even timely coverage of world events would be severely constrained.

A substantial segment of satellite and earth station customers, often referred to as “occasional use” customers, require access to various satellites, with short notice to the operator.

⁸ NPRM at ¶ 40.

More than twenty percent of Loral's customer base is comprised of occasional use customers. Such customers often comprise more than ninety percent of a teleport operator's customer base. Teleport operators have very little control over the satellite and frequencies that may be available at a given time and require frequency agility - - access to a full frequency band - - to accommodate constantly changing satellite operational configurations and to meet customer demands. However, it is not just teleport operators and satellite end users that require such frequency agility; individual earth station operators have the same needs.

Satellite operators also use consistently changing frequencies to monitor the services being conducted on their satellites. The earth stations used by these operators to respond to customer inquiries regarding service quality must maintain full-band flexibility in order to conduct performance tests and investigate interference problems when and where required. Both satellite and earth station operators require frequency agility in the event of an emergency. A satellite or transponder failure or service interruption could require that Loral immediately move a customer from one transponder or satellite to another. Many satellite customers provide various essential consumer services including paging and broadcast news services. Any limitation on a satellite operator's ability to move a customer to a new frequency or satellite, or a limitation that would prevent an earth station licensee from accessing available, alternate capacity, or a requirement that the operator conduct a frequency coordination or seek a license modification prior to such action would make the prompt provision or restoration of their services impossible.

As noted in the NPRM, not all frequencies on every satellite are available for use by a specific earth station because of technical and operational constraints placed on the satellite to ensure spectrum efficiency, including two degree spacing and the need to coordinate not only

with terrestrial providers but also adjacent satellite operators.⁹ The piecemeal licensing that would result from the Commission's proposals would create substantial constraints on the required flexibility.

III. THE "DEMONSTRATED USE" REQUIREMENT IS UNFEASIBLE AND UNREASONABLY BURDENSOME

The need for frequency agility, as described more fully in Section II above, is fully documented in the record to this proceeding.¹⁰ Unfortunately, despite the fact that the FCC seems to recognize this inherent need, it proposes a new set of rules that would severely limit frequency agility for earth station operators and their satellite correspondents. The Commission proposes to require FSS earth station operators to "demonstrate to [a] frequency coordinator, at the time an FS operator requests and is denied coordination, that the FSS earth station is using, or has imminent plans to use, the spectrum in question."¹¹ If the FSS operator cannot demonstrate use, the FS station must be coordinated and the FSS earth station cannot cause unacceptable interference to, nor will it be protected from interference from, the FS station on that spectrum in the future¹² - even if the FSS operator is the legitimate licensee of that spectrum.

⁹ NPRM at ¶ 19. As the Commission notes, GSO satellites "usually must accept constraints on the use of frequencies" as part of the adjacent satellite coordination process. *Id.* The FWCC implies that satellite earth station operators are not spectrally efficient. This is just not so. Two-degree spacing, power limitations, earth station equipment requirements and the coordination process require the satellite industry to operate in a very efficient manner.

¹⁰ NPRM at ¶ 34 (*citing* Comsat Opposition at 11; Comsat Reply Comments at 3; SIA Opposition at 5; GE Americom Opposition at 6-11; HBO Opposition at 2, 4-5; Attachment A; Sprint Opposition at 2, 4; MCI Worldcom Reply Comments at 2; Williams Opposition at 2; ATC Reply Comments at 4-5; SkyBridge Comments at 9, n.23; McKibben Letter at 2).

¹¹ NPRM at ¶ 44.

¹² NPRM at ¶ 8.

There are many reasons why the Commission's demonstrated use proposal will not work. In practice, a demonstrated use requirement would amount to a "rolling" actual need or loading requirement, which the Commission has wisely declined to adopt.¹³ The operational requirements promoted by the Commission's full-band licensing policy is as applicable to the current use of spectrum by earth station operators as it is for future, unanticipated use. The potential for such future use would be crippled by the Commission's demonstrated use proposal. Earth station operators cannot and do not operate in a static environment. As noted in the Opposition filed by Williams Communications, Inc. to the FWCC Petitions, earth station operators cannot state in their applications the precise frequencies at which they will be required to operate because these frequencies are constantly changing as a result of customer demand and changing satellite configurations.¹⁴ For the same reasons, when called upon, earth station operators may not be in a position to demonstrate past or future use as would be required by the Commission's proposals.

What would an earth station operator do if it needed to switch frequencies to provide coverage of a breaking news event but those frequencies had been deleted from its license for lack of "use?" Under the Commission's proposals, that earth station operator would be required to apply for a license modification or coordinate its operations with all affected terrestrial operators in order to access the necessary frequencies.¹⁵ This would effectively deny essential service to the public.

¹³ NPRM at ¶ 40.

¹⁴ Opposition of Williams Communications, Inc. at 2 (filed July 12, 1999).

¹⁵ As noted by HBO, in instances of satellite or transponder failure, "HBO could be required to re-point antennas to different satellites and/or change to frequencies (that may not be known until the interruption event occurs) within minutes. The prospect of having to conduct a frequency coordination or to seek a

Further, the demonstrated use “remedy” to the imaginary problems raised by the FWCC will undoubtedly be more complex than foreseen. The Commission’s proposal appears premised on the incorrect notion that coordination always involves a single FS and FSS link. This is not the case. For example, an FS operator seeking coordination for certain frequencies may often be required to coordinate with more than one earth station (e.g., when requesting coordination with earth stations that comprise teleports). These multiple earth stations will invariably be transmitting on different frequencies. Not only will all of these earth stations be compelled to undergo the demonstrated use test, but inevitably at least one of them will pass, therefore rendering unavailable the spectrum sought by the FS operator (absent mutually acceptable mitigation). In practice, the aggregate impact of the coordination burden caused by the Commission’s proposals would free up very little spectrum for FS operators, if any.¹⁶

Administratively, the Commission’s demonstrated use proposal is burdensome and unwieldy. Developing any set of criteria for determining “use” would be incredibly complex. Even if the Commission could come up with a reasonable set of criteria, balancing or weighing them would be virtually impossible.¹⁷ As described, this is not a system that easily lends itself to administration. Depriving earth station operators of access to coordinated spectrum will significantly harm both the earth station and satellite operator’s ability to respond to system configuration requirements and customer demand and is not in the public interest.

modification of a license under these circumstances simply would be unacceptable.” Opposition of Home Box Office at 5 (filed July 12, 1999).

¹⁶ The Commission has also failed to address some important administrative issues. For example, would the fixed service operator seek to coordinate all licensed frequencies or would it submit requests *seriatim*?

¹⁷ For the same reasons, Loral does not believe that the Commission should develop a spectrum efficiency standard for FSS earth stations.

As proposed, a demonstration of use would also require the disclosure of highly confidential and competitively sensitive business data, including customer loading information and contracts, to frequency coordinators. These coordinators are generally employed by a satellite operator's competitors as well as fixed service operators. Although the NPRM suggests that operators could request confidential treatment of such information, it does not provide a proposal by which it would ensure that such information be protected.¹⁸ The NPRM also proposes that a frequency coordinator evaluate use demonstrations.¹⁹ There are very few frequency coordination companies and a coordinator working on an FS/FSS coordination will most likely be handling the coordination for both sides. The frequency coordinator is therefore in a delicate position of potential conflict and the distribution of competitively sensitive information to these entities would be extremely problematic. Moreover, it is unclear whether frequency coordinators are even qualified for the adjudicatory role the Commission appears ready to assign to them. The proposal fails to discuss how appeals from the decision of the frequency coordinator will be taken and how the Commission will process such appeals.

The Commission recognizes the significant legal limitations on application of their new rules to existing FSS earth station licensees. If the FCC's requirements would delete frequencies currently authorized to the FSS earth station without the operator's consent, administrative law would require that the Commission undertake an administrative hearing to amend the FSS earth station license.²⁰ The deletion of frequencies from an earth station's license would have devastating effects on its business. This would clearly become an issue in the proceeding.

¹⁸ NPRM at ¶ 53.

¹⁹ NPRM at ¶ 53.

²⁰ NPRM at ¶ 58.

IV. THE NPRM'S OTHER COORDINATION PROPOSALS ARE UNREASONABLE

The NPRM also proposes to modify the way prior coordinations affect subsequent coordinations. Specifically, the NPRM proposes “that if an FSS earth station or FS station applicant employs certain interference mitigation techniques (such as terrain shielding or building blockage) in order to coordinate its station successfully, then to the extent that those same conditions exist for subsequent requests for coordination between an FSS and FS station applicant and licensee, the FSS earth station or FS station licensee must give those interference mitigation factors the same weight as in the original coordination.”²¹ This proposal is fundamentally flawed.

Loral’s practice (consistent with the Commission’s rules) is to deal reasonably and equitably with its neighboring terrestrial users. However, contrary to the Commission’s assumptions, there are very few elements that are identical or nearly identical with respect to individual coordinations.²² Requiring the earth station operator to assign the same weight to the same mitigation factors in subsequent coordinations for new or modified FS stations is unreasonable and ignores the cumulative effects of interference from adding multiple FS systems and other sources of interference as well as changes in topography, such as construction or demolition of buildings, growth and removal of trees, among others, which may have a significant impact on coordination. Moreover, earth station operators that have accepted a certain level of interference have taken a risk that they can provide satisfactory service with the limited downlink margin that is available. Requiring the earth station operator to give the same weight to the same mitigation factors while accepting harmful interference from new fixed

²¹ NPRM at ¶ 78.

²² NPRM at ¶ 73.

stations is unreasonable and would inevitably discourage operators from taking risks with respect to the mitigation impact of topographical features, for example.

The Commission also suggests that if, during coordination, an earth station operator accepts a level of interference that is below accepted interference objectives along a set of azimuths and elevation angles, then the earth station operator is not entitled to protection from interference from future FS applicants on those same frequencies within that same set of azimuths and elevation angles.²³ This suggestion also ignores the cumulative effects of successive coordinations and is similarly unsound.

In many instances, an earth station operator may be compelled to accept interference in a relatively small portion of its licensed spectrum in order to complete coordination. However, the earth station operator should not be forced to sacrifice the viability of its entire system in future coordinations. In some cases, the earth station operator may have accepted a higher than ideal level of interference in the spirit of coordinating with the first terrestrial operator. The sacrifices made by operators in an initial coordination are a perfect example of how the Commission's current spectrum sharing policies are working and should not be held against it in a subsequent coordination. As noted by HBO in its Opposition to the FWCC Petitions, such a rule would subject earth station operators to "intolerable future interference" and "discourage such licensees from granting any exceptions because to do so could open the flood gates to seriously harmful interference in the future."²⁴ This would be counterproductive to the Commission's efforts to encourage sharing and mutually acceptable coordination agreements.

²³ NPRM at ¶ 78.

²⁴ Opposition of Home Box Office at 2.

As a general matter, no justification has been provided for the proposals discussed above. The FWCC provides only one anonymous example where a subsequent terrestrial operator had been denied coordination.²⁵ There is no support in the record for the proposed radical revision of the Commission's rules under such circumstances.

V. ONSAT PROPOSAL

Based on a Petition for Declaratory Order filed by Onsat Network Communications,²⁶ the FCC has also proposed to amend its rules to permit the licensing, under a single authorization and with prior coordination, of a limited class of small aperture terminal earth station networks in the C-band to communicate with GSO satellites (CSATs).²⁷ Loral generally supports this proposal.

The Commission proposes to license CSAT networks for no more than three satellite locations within the visible geostationary satellite arc.²⁸ Loral would like the Commission to clarify that despite this requirement, the CSAT operator may choose any three satellites or orbital locations. Further, Loral believes that the Commission should not limit CSAT service to rural areas but should instead permit such service wherever frequency coordination allows the installation of a CSAT earth station.²⁹

²⁵ FWCC Petition at fn. 17.

²⁶ Onsat Network Communications, Inc. Petition for Declaratory Order that Blanket Licensing Pursuant to Rule 25.115(c) is Available for Very Small Aperture Terminal Satellite Network Operations at C-Band, SAT-PDR-19990910-00091 (filed Sept. 10, 1999).

²⁷ NPRM at ¶¶ 2, 81-97.

²⁸ NPRM at ¶ 93.

²⁹ NPRM at ¶ 95.

VI. CONCLUSION

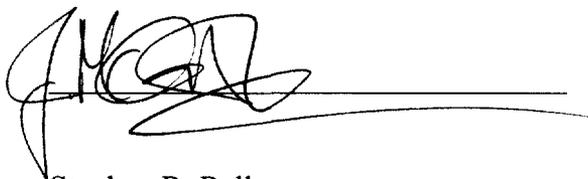
Satellite services play a vital role in our nation's communications infrastructure. The Commission's current rules have permitted these services to expand to address consumer demand. Adoption of the new sharing rules proposed in response to the FWCC's Petitions is completely unsupported by the record and would result in a radical, unnecessary departure from the FCC's long-standing rules and policies regarding the licensing and coordination of earth stations. This could cripple the satellite services industry with no concomitant public benefit.

The FWCC Petitions should never have resulted in a rulemaking. The FWCC has provided no evidence that terrestrial operators are in any way harmed by the current rules. The satellite industry has a sound record of attaining mutually agreeable coordination agreements with terrestrial operators. The Commission's well-established rules have promoted practical and efficient and equitable use of spectrum and should not be changed.

Respectfully submitted,

LORAL SPACE & COMMUNICATIONS LTD.

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