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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

February 27, 2001

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VIA HAND DELIVERY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. Room TW-A325  
Washington, D.C. 20554

EX PARTE OR LATE FILED

Re: Winstar Communications, Inc.; Written Ex Parte Presentation;  
IB Docket No. 97-95

Notice of Written Ex Parte Presentation

Dear Sir/Madam:

On February 14, 2001, on behalf of Winstar Communications, Inc., I sent an email to Trey Hanbury regarding the FCC's possible initiation of a proceeding to revise the allocation and designation of spectrum in the V-Band in light of the outcome of WRC-00. Copied on the email were Charlie Breig, Cecily Holliday, Ed Jacobs, John Giusti, Ric Engelman with the International Bureau and Ron Netro with the Wireless Bureau.

While there is no active proceeding addressing this matter, Mr. Hanbury has requested that I treat the email as an ex parte presentation and notify the Secretary accordingly. He suggested that I associate this Notice of Written Ex Parte Presentation with the proceeding that most recently considered the allocation and designation of spectrum in the V-Band, IB Docket No. 97-95.

Pursuant to Section 1.1206(b) of the FCC's rules, 47 C.F.R. § 1.1206(b), I am submitting to the Secretary two copies of this *ex parte* presentation. Should there be any questions regarding the above, please do not hesitate to contact the undersigned at 202-367-7600.

Very truly yours,



Barry J. Ohlson  
Senior Director, Federal Regulatory Counsel

Enclosure

cc: Trey Hanbury, IB

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X-Sender: bohlson@mail.winstar.com  
X-Mailer: QUALCOMM Windows Eudora Pro Version 4.2.0.58  
Date: Wed, 14 Feb 2001 14:33:20 -0500  
To: "Trey Hanbury" <GHANBURY@fcc.gov>  
From: Barry Ohlson <bohlson@winstar.com>  
Subject: Re: V-Band NPRM  
Cc: CBREIG@fcc.gov, CHOLIDAY@fcc.gov, EJACOBS@fcc.gov, JGIUSTI@fcc.gov,  
RENGELMA@fcc.gov, jsandri@winstar.com, jramasastry@winstar.com,  
gdedios@winstar.com, mnetro@fcc.gov

Trey:

Thank you for setting up the recent meeting to discuss the upcoming V-Band proceeding. I wanted to write you an email to clarify some of the points that were raised during the discussion. Hopefully you will find this useful in considering the proceeding.

Most importantly, Winstar strongly believes that the upcoming proceeding should focus solely on realigning the V-Band consistent with the outcome of WRC-00. With respect to the 38.6-40.0 GHz (39 GHz Band), we urge the FCC to simply state that the allocation in the 39 GHz band remains the same, but that the power flux-density limits are being reviewed. Additionally, the FCC could note that there exists today no provision in the Part 25 rules for licensing any earth stations in the 39 GHz band, so it is certainly premature to speculate about what kind of protection, if any, the earth stations would receive in that band. The proceeding should not address the premature issue of possible future coordination of FSS services in the 39 GHz band.

If the FCC does say anything in the proceeding with regard to the operation of satellite earth stations in the 39 GHz band, it should further clarify that such facilities operate on a non-interference, secondary licensing priority basis with respect to the terrestrial wireless service. This position is fully consistent with the FCC's previous decision to allocate the 39 GHz band to the terrestrial wireless service and its decision in the LMDS proceeding, as noted below.

While a large portion of the V-Band is allocated to the FSS and FS on a co-primary basis, the 39 GHz band already has been primarily designated to the fixed service. An FCC decision to permit space-to-earth signals in the 39 GHz band pursuant to a baseline PFD limit should not be confused with an FCC decision to permit both FS and FSS services in the 39 GHz band on a co-primary basis. Indeed, it is worth adding that the tentative "agreement" that has been reached to date on PFD levels in the 39 GHz band has done nothing to resolve the very severe coordination problems that would exist in the band. Moreover, it was the coordination problem that arguably led to the segmentation of the V-Band (and the 18 GHz and 27.5-29.5 GHz bands), not the potential interference posed by PFD levels.

Additionally, it should be noted that the exact opposite situation would hold true for the 40.0-42.0 GHz band in the United States pursuant to the U.S. position going into WRC-00. Specifically, in the 40.0-42.0 GHz band, satellite systems would have a domestic primary designation of the band, and any terrestrial operations must be operated on a non-interference basis to the satellite operations.

The positions outlined above also are consistent with the FCC's approach in the LMDS proceeding (CC Docket No. 92-297) that dealt with the 27.5-29.5 GHz band, which is allocated on a co-primary basis to both the FS and FSS services. In the First Report and Order in that proceeding, the Commission designated the 27.5-28.35 GHz band for primary terrestrial (LMDS) services. In that proceeding, satellite operators suggested that the Commission offer some protection to FSS gateways operating in the same band. However, in paragraph 48, the Commission rejected the satellite proposal and noted that the "proposal is inconsistent with the designation of FSS for secondary licensing priority in the 27.5-28.35 GHz band and potentially deprives LMDS of its domestic priority designation" (underline added). It then added that "[i]f proponents of FSS systems implement these systems will not be able to claim protection against harmful interference from LMDS

operators." As outlined in paragraph 44, the FSS will have licensing priority in the 27.5-28.35 GHz band segment vis-a-vis any third service domestically or internationally in the band, but the FSS will "have no licensing priority over the [LMDS] service in the band segment and must operate on a non-interference basis and must accept interference vis-a-vis that [LMDS] service."

Winstar strongly believes that Commission precedent in the LMDS band dictates a similar approach for the 39 GHz band. Notwithstanding any possible space-to-earth transmissions, the 39 GHz band remains primarily designated to the terrestrial wireless service. Consequently, satellite earth stations that are deployed by Part 101 licensees in this band must not be allowed to limit existing or future deployment of terrestrial facilities. If a satellite operator desires some type of protection for its *Part 25* earth stations, it must secure enough 39 GHz licenses that it creates its own "buffer" zone, or it must enter into commercial arrangements with existing 39 GHz licensees who may be affected by the satellite operations. We believe that this is fully consistent with U.S. positions at CITEL and WRC-00. This position also compliments the FCC policy outlined for secondary spectrum markets.

Winstar understands that satellite systems possibly may be permitted in the future to transmit in the space to earth direction in the 39 GHz band. Of course, the exact PFD levels of those signals must still be confirmed. The PFD levels also must ensure that terrestrial wireless operators are afforded maximum operational flexibility consistent with the soft segmentation plan advocated by the US at CITEL and WRC-00, and the segmentation plan previously adopted by the FCC in the V-Band proceeding.

However, nothing to date -- neither WRC-00, the 39 GHz proceeding, nor the V-Band proceeding -- contemplates giving satellite earth stations some type of "improved" status in the 38.6-40.0 GHz band. In other words, satellite earth stations simply cannot claim interference protection from existing or future terrestrial wireless facilities in the 39 GHz band that are operating pursuant to their licenses and consistent with the FCC's Part 101 technical rules. In this regard, it is appropriate for the FCC to clarify that such services may only operate on a non-interference, secondary licensing priority basis to terrestrial operations in the 39 GHz band.

Please let me know if you have any questions, and thanks again for your time.

- Barry

At 10:02 AM 01/22/2001 -0500, Trey Hanbury wrote:

Barry,

Thanks for writing to confirm. I still have you down for 9 a.m. Tuesday January 23, 2001. Please call me when you arrive on the 7th floor and we'll let you in. We're working with a number of people in Wireless on this issue. I'd recommend you talk to Ron Netro (418-0608) as a central point of contact. See you tomorrow.

Trey