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FEDERAL COMMUNICATIONS COMMISSION
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October 15, 2001

BY HAND DELIVERY

Mr. Edward R. Jacobs
International Spectrum & Communication Policy Branch
Planning and Negotiations Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: 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 (IB Docket No. 00-203, RM-9649)

Dear Mr. Jacobs:

On September 6th, 2001, Robert Zitter and John Redpath of Home Box Office, and Nicholas Eddy and I of Mintz Levin met with you, John Martin and Paul Locke of the International Bureau, and Thomas P. Stanley of the Wireless Telecommunications Bureau, to discuss the Commission's "demonstrated use" proposal for promoting spectrum sharing between Fixed-Satellite Service ("FSS") earth station licensees and terrestrial Fixed Service ("FS") users. The discussion focused on the critical need that FSS earth station operators have for unconstrained, flexible access to multiple satellites and transponders. Also discussed was the lack of any evidence in the record that would justify the demonstrated use proposal, the adoption of which would have a substantial adverse effect on FSS earth station flexibility.

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During the meeting, it was suggested that a motivating force behind the proposal was the inability of FS licensees to afford expensive frequency coordination efforts in order to license their systems.

Having reviewed all comments supporting the FCC's "demonstrated use" proposal in IB Docket No. 00-203, we have found no evidence to support this suggestion. In fact, the "evidence" that FS licensees are being excluded from operations in the shared spectrum is largely anecdotal and merely assumed by those commenters supporting the "demonstrated use" proposal.

A. FWCC "Evidence"

The Fixed Wireless Communications Coalition's ("FWCC") May 1999 Request for Declaratory Ruling and Petition for Rule Making, which prompted the Commission's NPRM, repeatedly focuses on the asymmetry of regulatory treatment accorded satellite earth stations and terrestrial operators. One section of the Request is titled "[o]ne sided requirements for spectrum conservation unfairly penalize terrestrial users," but it offers no evidence of actual disadvantage other than the inconsistent standards.

The FWCC's Comments in response to the NPRM claim that it has "provided detailed comment in several recent allocation proceedings on the increasing coordination difficulties caused by ubiquitously deployed FSS earth stations in supposedly co-equal shared bands." There is no cite provided for these comments, and a search of pertinent FWCC filings in the FCC comment database finds that the FWCC comments apparently being referred to lack any substantiating evidence of coordination difficulties.¹

The FWCC Comments assert that "the problem arose first in the 4 GHz C-band," and has advanced to the point that earth station coordinations have "effectively sterilize[d] the entire band for much of the country. It is now virtually impossible to coordinate any FS system in the 4 GHz band."² FWCC claims that the fact that "many manufacturers have abandoned their 4 GHz point-to-point product lines" supports its conclusions.

¹ FWCC Opposition to Petitions for Reconsideration, *In Re 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*, IB Docket No. 97-95 (April 6, 1999); FWCC Reply Comments, *In Re Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with the GSO and Terrestrial Systems in the KU-Band Frequency Range*, ET Docket No. 98-206 (April 14, 1999); FWCC Comments, *In Re Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band*, IB Docket No. 99-81 (June 24, 1999); FWCC Comments, *In Re FCC Rules Section 101.145 -- Interference to Geostationary Satellites from Point-to-Point Microwave Systems*, RM-9830 (April 7, 2000); FWCC Comments, *In Re The 4.9 GHz Band Transferred from Federal Government Use*, WT Docket No. 00-32 (April 26, 2000).

² In later filed Reply Comments, FWCC moderated this assertion by saying it "is now virtually impossible to coordinate any FS system in the 4 GHz band *in or near a metropolitan area.*" (emphasis supplied).

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In its Reply Comments, the FWCC responds to criticisms that it has no evidence by claiming the existence of “extensive anecdotal evidence from FS operators whose links were precluded by earth stations. No one tabulates that data, however.” FWCC goes on to assert, without support, that “a prudent FS operator will not undertake the time and expense to complete a coordination unless it has a reasonable chance of success ... only as a last resort will the FS applicant ask operator [sic] to coordinate.”

Harris Corporation, a terrestrial fixed microwave equipment manufacturer, filed Reply Comments supporting the FWCC, but merely complained that “[f]ixed service operators face chronic shortages in many parts of the country,” without presenting any specific examples. The Association of American Railroads and DMC Stratex Networks, Inc. filed Reply Comments incorporating language that was identical to that used by Harris Corporation. The United Telecom Council filed Reply Comments supporting the FWCC but merely asserting a shortage of spectrum without providing any specific evidence.

B. The Record

In contrast to the broad, unsubstantiated claims of the FWCC and its members, the only *evidence* in the record regarding coordination of FS and FSS facilities belies the claim of increasing coordination difficulties. With respect to the 4 GHz frequencies, data compiled by Comsearch and presented at our September 6, 2001 meeting (copy attached as updated) shows the following:

* Between 1992 and the present, the number of active 4 GHz microwave channels has declined by 73%, from almost 29,000 in 1992 to about 7,700 today.

* During the same period, the number of coordinated 4 GHz earth stations has been roughly constant -- 12,867 in 1992 vs. 12,199 in 2001.

The above figures show that 4 GHz frequencies are being abandoned by FS operators in great numbers. The magnitude of this relinquishment of coordinated facilities cannot be squared with claims by FS operators that they are facing severe hardships from the inability to coordinate new links. Moreover, the fact that many existing facilities are being abandoned, rather than renewed, more than likely explains the FWCC claim that equipment manufacturers are discontinuing their 4 GHz microwave equipment lines.

The data also shows that any coordination problem is not the result of a multiplication of 4 GHz FSS earth stations. In nine years, the number of such coordinated earth stations has hardly changed, and in fact has decreased slightly.

A different picture emerges with respect to 6 GHz frequencies, but here again, the data does not support the assertion that FSS earth stations are blocking the deployment of FS facilities. Since 1992, the number of FS 6 GHz channels has fluctuated slightly, and now stands

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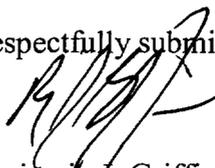
at 32,000. With respect to earth stations, the number of coordinated locations has decreased by 25% in nine years, totaling only 4,192 today.

The number of successful coordinations in the 6 GHz band is also enlightening. Attached hereto is a chart showing successful coordinations of 6 GHz microwave paths and FSS earth stations in the nine year period from 1992 to the present. During this period, there were a total of 21,208 microwave paths coordinated and only 2,521 earth stations coordinated (excluding temporary 6 GHz earth stations, which are coordinated for short periods of time not to exceed six months). These figures can hardly be construed to suggest that FS operators are having grave difficulties coordinating their links or that FSS earth station operators are making disproportionate use of the shared spectrum.

In conclusion, the record simply cannot support a wholesale restructuring of the current rules for FS/FSS frequency coordination that have worked well for so many years. Rather than evidencing any substantial coordination difficulties, the data compiled by Comsearch and attached to this letter shows (1) that FS licensees are voluntarily relinquishing their previously coordinated 4 GHz facilities and (2) that FS operators have successfully coordinated large numbers of 6 GHz microwave links -- numbers that far exceed the volume of new 6 GHz FSS earth stations being installed. Accordingly, HBO urges the Commission to reject "demonstrated use," as the large majority of commenters has recommended.

Pursuant to Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, an original and one copy of this letter are being submitted to the Secretary's office with copies to those International Bureau and Wireless Telecommunications Bureau staff who attended the September 6, 2001 meeting. Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,



Benjamin J. Griffin
Member

cc: John Martin
Paul Locke
Thomas P. Stanley
IB Docket No. 00-203
SAT-PDR-19990910-00091

4 & 6 GHz Terrestrial and Satellite Active Channels, 1992-2001*

	<u>12/92</u>	<u>12/93</u>	<u>12/94</u>	<u>12/95</u>	<u>12/96</u>	<u>12/97</u>	<u>12/98</u>	<u>12/99</u>	<u>07/00</u>	<u>08/01</u>	<u>% Change</u> (^{'92} -latest)
<u>4 GHz (3700-4200 MHz)</u>											
Terrestrial	28,902	24,892	15,963	13,250	13,076	12,988	9,766	8,724	7,986	7,697	-73.3%
Earth Station	12,867	12,088	11,048	11,139	11,362	11,485	11,735	<i>N/A</i>	<i>N/A</i>	12,199	-5.2%
<u>6 GHz (5925-6425 MHz)</u>											
Terrestrial	31,064	29,845	29,897	30,909	32,171	32,872	32,758	28,706	30,088	32,060	+3.2%
Earth Station	5,571	4,779	2,915	3,654	3,618	3,656	3,826	<i>N/A</i>	<i>N/A</i>	4,192	-24.8%

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* Active Channels on Records Reflecting Applied, Licensed, or Granted Status.
Data compiled by Comsearch.

Number of Coordinated Paths (Terrestrial) and Earth Station Sites (Satellite) (Per Year)

	1992	1993	1994	1995	1996	1997	1998	1999	2000
Terrestrial									
All 6 GHz (5925 - 6425 MHz)	1957	1400	2384	2671	2897	2480	2953	2180	2286
Earth Station									
All 6 GHz T/R and T/O	283	323	260	216	240	274	302	327	296

Data compiled by Comsearch