

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Establishing Rules and Policies for the use of)	IB Docket No. 96-132
Spectrum for Mobile Satellite Services in the)	
Upper and Lower L-band)	

**PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION OF
MOBILE SATELLITE VENTURES SUBSIDIARY LLC**

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Summary

Mobile Satellite Ventures Subsidiary LLC (“MSV”) supports the Commission’s decision to modify MSV’s license to allow it to operate in both the upper and lower L-band. The Commission’s decision fully complies with the requirements of Section 316 for modifying a Commission license and will serve the public interest by facilitating MSV’s access to L-band spectrum.

In stark contrast to its decision allowing MSV to operate in the lower L-band, the Commission’s decision to reduce MSV’s licensed spectrum from 28 MHz to 20 MHz is in clear violation of Section 316 of the Communications Act. The Commission never provided MSV with notice of its proposed action to reduce MSV’s licensed spectrum by 8 MHz. Thus, MSV never had an opportunity either to protest such modification, or to present its case at a hearing, as required by Section 316.

While the Commission states that limiting MSV to 20 MHz of L-band spectrum is legally permissible because it is consistent with “whatever reasonable expectations” MSV may have had, this is false. MSV admits that coordinating even 20 MHz of L-band spectrum is difficult and that it has urged the Commission to ensure it access to at least 20 MHz. But MSV has never waived its right to coordinate the full amount specified in its license. While the Commission asked for Comments in the *1996 NPRM* as to whether 20 MHz of L-band spectrum was the minimum amount needed for a viable MSS operation, it did so solely for the stated purpose of determining whether it was practical to license another system in the L-band, not to determine whether MSV’s license provided it with too much spectrum. Nor does the Commission’s decision authorizing TMI to provide service in the United States justify or provide notice of its instant decision to take 8 MHz of spectrum from MSV.

The Commission has failed to demonstrate that taking 8 MHz from MSV will serve the public interest. MSV will need 28 MHz to serve its present and future customers. Its proposed next-generation system is designed to create a more valuable and affordable service to very small handheld devices, for which MSV expects a substantial increase in demand. The Commission's general interest in promoting competition does not justify taking spectrum from MSV, especially when there is no evidence that the MSS industry is not already competitive. Thus, MSV urges the Commission to reconsider its decision and to allow MSV the opportunity to access the full 28 MHz of L-band spectrum its license provides.

Equally concerning is the Commission's apparent decision to attribute L-band spectrum coordinated by Industry Canada for MSV Canada to MSV for purposes of calculating MSV's spectrum cap. MSV Canada and MSV have not merged. MSV and MSV Canada are owned, controlled and operated by two separate corporate entities each of which has its own controlling shareholders. MSV and MSV Canada are distinct entities and their relationship cannot justify attributing MSV Canada's coordinated L-band spectrum to MSV for purposes of calculating MSV's spectrum cap. In addition, the Commission cannot unilaterally limit the amount of spectrum Industry Canada can coordinate for MSV Canada. MSV Canada is licensed by Industry Canada to serve Canadian users and needs access to sufficient spectrum to serve these users.

If the Commission does not reverse its decision to apply a 20 MHz L-band spectrum cap on MSV, then Commission policies require that the same cap apply to Inmarsat and any other, foreign-licensed L-band MSS systems. Otherwise, for the first time, one of the L-band MSS operators will be limited in the amount of spectrum it is permitted to coordinate. Such a policy

would violate the principles the Commission established to govern the authorization of foreign-licensed satellite systems to provide domestic service.

Finally, MSV does not object to the rules the Commission has adopted regarding priority and preemptive access in the lower L-band. MSV asks only that the Commission clarify two rules pertaining to land earth stations that only apply if the land earth station has a requirement to handle maritime distress and safety communications.

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PETITION FOR CLARIFICATION AND PARTIAL RECONSIDERATION

Mobile Satellite Ventures Subsidiary LLC (“MSV”) hereby files this Petition for Clarification and Partial Reconsideration of the *Order* adopted in the above-captioned proceeding in which the Commission has modified the license of MSV, the United States L-band Mobile Satellite Service (“MSS”) system licensee, by assigning it a total of 20 MHz of spectrum in both the upper and lower L-bands.

Background

MSV is the successor to Motient Services Inc.¹ (“MSI”) (f/k/a AMSC Subsidiary Corporation), the entity authorized by the Commission in 1989 to construct, launch, and operate a U.S. MSS system in the 28 MHz of upper L-band spectrum (1545-1559 MHz (downlink) and 1646.5-1660.5 MHz (uplink)).² The first MSI satellite (AMSC-1, also referred to as MSAT-2)

¹Throughout the *Order*, the Commission incorrectly refers to MSI as the U.S.-licensed L-band MSS operator. *See, e.g.*, Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, *Order*, IB Docket No. 96-132 (2002) (“*Order*”), at ¶¶ 1, 47. While MSI was the U.S. L-band MSS licensee when this proceeding was initiated, the Commission in November 2001 consented to the assignment of the licenses held by MSI, including its space station license for AMSC-1, to MSV. *See* Motient Services Inc., TMI Communications and Company, LP, and Mobile Satellite Ventures Subsidiary LLC, *Order and Authorization*, DA 01-2732 (Nov. 21, 2001). MSV asks that the Commission clarify the *Order* to provide that MSV, and not MSI, is the U.S.-licensed L-band MSS operator and that the *Order* applies to MSV and not MSI.

²Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989); Final Decision on Remand, 7 FCC Rcd 266 (1992); *aff’d sub nom.* Aeronautical Radio, Inc. v. FCC, 983 F.2d 275 (D.C. Cir. 1993) (“*Licensing Order*”).

was launched in 1995, and MSI began offering service in 1996. In November 2001, MSI entered into a joint venture with Mobile Satellite Ventures (Canada) Inc. (“MSV Canada”), the Canadian licensee of the L-band MSS satellite MSAT-1, forming MSV.³

Upper and Lower L-bands. The Commission has historically divided the L-band into upper and lower bands. The upper L-band comprises the 1545-1559 MHz (downlink) and 1646.5-1660.5 MHz (uplink) bands. MSS in the upper L-band is subject the requirement to provide priority and preemptive access for aeronautical safety communications. 47 C.F.R. § 2.106 US308. The lower L-band comprises the 1525-1544 MHz (downlink) and 1626.5-1645.5 MHz (uplink) bands. MSS in the lower L-band is subject to the requirement to provide priority and preemptive access for maritime distress and safety communications. 47 C.F.R. § 2.106 US315.

The L-band is shared with foreign MSS systems, including Inmarsat and the systems licensed by the Canadian, Japanese, Mexican, and Russian administrations. The presence of these multiple systems requires international coordination of the available spectrum. International coordination of these frequencies has been difficult, because the aggregate demand of the different systems far exceeds the supply of L-band spectrum. *Order* at ¶ 9.

In 1989, MSV was licensed to provide MSS in the upper L-band.⁴ In January 1990, MSV filed an application requesting authority to operate in the lower L-band.⁵ The Commission subsequently issued a Notice of Proposed Rulemaking proposing to allocate the lower L-band for

³See Motient Services Inc., TMI Communications and Company, LP, and Mobile Satellite Ventures Subsidiary LLC, *Order and Authorization*, DA 01-2732 (Nov. 21, 2001).

⁴Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041 (1989)

⁵See AMSC Application to Modify Space Station Authorizations to Operate at 1530-1545 MHz and 1626.5-1646.5 MHz Frequency Bands (filed January 25, 1990).

MSS.⁶ In June 1993, the Commission released an Order allocating the lower L-band for MSS.⁷ MSV subsequently filed an amendment to its pending application to operate in the lower L-band to request construction and launch authority for the lower L-band as well.⁸ While its application was pending, the Commission authorized MSV to operate in the lower L-band pursuant to Special Temporary Authority (“STA”).⁹

1996 Lower L-band NPRM. In June 1996, the Commission released a further Notice of Proposed Rulemaking relating to MSS in the L-band.¹⁰ The Commission discussed that in the course of international coordination, it had become clear that the U.S. would not be able to secure sufficient spectrum in the upper L-band for MSV. *1996 NPRM* at ¶ 9. The Commission explained that it did not think it would be possible to secure for MSV the 28 MHz of spectrum for which it was licensed in the upper L-band. *Id.* The Commission also stated that it doubted whether there was sufficient spectrum in the lower L-band to license another MSS system in that band. *Id.* at ¶ 10. Thus, the Commission proposed to modify MSV’s license to assign it lower

⁶See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum for Mobile-Satellite Services in the 1530-1544 MHz and 1626.5-1645.5 MHz Bands, *Notice of Proposed Rule Making*, 5 FCC Rcd 1255 (1990).

⁷See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum for Mobile-Satellite Services in the 1530-1544 MHz and 1626.5-1645.5 MHz Bands, *First Report and Order and Further Notice of Proposed Rule Making*, 8 FCC Rcd 4246, (1993); see also Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum for Mobile-Satellite Services in the 1530-1544 MHz and 1626.5-1645.5 MHz Bands, *Second Report and Order*, 10 FCC Rcd 7305 (1995).

⁸See AMSC Amendment to its Application to Modify its Authority to Construct, Launch, and Operate a Mobile Satellite Service System (filed July 12, 1993) (filed in response to AMSC Subsidiary Corporation, *Memorandum Opinion and Order*, 8 FCC Rcd 4040, 4046-47 (June 14, 1993)).

⁹See, e.g., AMSC Subsidiary Corporation, *Order and Authorization*, 10 FCC Rcd 10458 (1995).

¹⁰Establishing Rules and Policies for the use of Spectrum for Mobile Satellite Services in the Upper and Lower L-band, *Notice of Proposed Rulemaking*, 11 FCC Rcd 11675 (1996) (“*1996 NPRM*”).

L-band spectrum “up to the full 28 MHz for which MSV is already authorized in the upper L-band.” *Id.* at ¶ 11. The Commission stated “[w]e propose to limit eligibility for the first 14 MHz of spectrum coordinated for Earth-to-space transmissions and the first 14 MHz coordinated for space-to-Earth transmissions in the upper and/or lower L-bands to [MSV]. [MSV] would have first priority for use of the lower L-band spectrum only as necessary to compensate for the loss of upper L-band spectrum currently assigned to it.” *Id.* The Commission also notified MSV that the proposal to assign it spectrum in the lower L-band would be a modification of MSV’s license under Section 316 of the Communications Act. *Id.* at ¶ 17. The Commission offered three bases for modifying MSV’s license: (i) MSS is well suited to serve areas that are too remote or sparsely populated to receive service from terrestrial land mobile systems; (ii) MSV was in the best position to provide MSS in the U.S. in the shortest amount of time; (iii) a license issued by the Commission must include a reasonable expectation that spectrum will be available to enable the licensee to implement the system that it has proposed and has been authorized to operate. *Id.* at ¶¶ 12-14. In the 1996 *NPRM*, the Commission also proposed to establish priority and preemptive access standards for MSS in the lower L-band. *Id.* at ¶¶ 25-27.

Lower L-band Order. In February 2002,¹¹ the Commission released an *Order* in this proceeding in which it modified MSV’s license pursuant to Section 316 of the Communications Act by assigning it a total of 20 MHz of spectrum in both the upper and lower L-bands. The Commission explained that the international coordination process continued to make it difficult to secure sufficient spectrum for MSV to establish and operate a viable MSS system. *Order* at ¶ 9. Thus, the Commission modified MSV’s license by assigning it lower L-band frequencies in addition to upper L-band frequencies. Having modified MSV’s license to allow operation in the

¹¹The Order was published in the *Federal Register* on August 7, 2002. See *Upper and Lower L-Band*, 67 Fed. Reg. 51,105 (August 7, 2002).

lower L-band, the Commission dismissed MSV's 1993 application requesting authority to use the lower L-band. *Id.* at ¶ 23.

The Commission also explained that, while at the time the *1996 NPRM* was adopted it did not believe that there would be sufficient spectrum to accommodate another system in the L-band, its views had changed. *Id.* at ¶¶ 18-19. The Commission noted evidence provided by commenters that technological developments have made it possible to operate a profitable MSS system using less than 20 MHz. *Id.* at ¶ 19. Thus, the Commission reassessed its earlier determination that the first 28 MHz of spectrum coordinated in the L-band would be reserved for MSV. *Id.* The Commission decided that “[a]lthough the system Motient has been authorized to construct and operate is designed to use 28 megahertz, the record indicates that the system is capable of providing an economically viable MSS service with as little as 20 megahertz of spectrum.” *Id.* With this in mind, the Commission decided to modify MSV's license by limiting it to a total of 20 MHz of coordinated spectrum in the upper and lower L-band for the remainder of its license period, stating that this “satisfies any reasonable expectations that MSV might have.” *Id.*

The Commission further explained that if sufficient spectrum in the L-band becomes available after it has coordinated 20 MHz of spectrum for MSV or if MSV “acquires access to at least 20 megahertz of L-band spectrum through other means, *i.e.* its proposed merger with TMI,” then applicants may apply for this additional spectrum. *Id.* at ¶ 20. The Commission concluded that “the public interest benefit derived from reserving the additional spectrum to enable the creation of competitive MSS providers outweighs any benefits that might stem from assigning additional L-band spectrum to MSV.” *Id.* at ¶ 19.

Discussion

I. THE COMMISSION SHOULD PROVIDE MSV WITH ACCESS TO 28 MHZ OF L-BAND SPECTRUM, AS ITS LICENSE PROVIDES

A. The Commission's Decision to Modify MSV's License by Imposing a 20 MHz L-band Spectrum Cap Violates Section 316 of the Communications Act

In deciding to reduce MSV's licensed L-band spectrum from 28 MHz to 20 MHz, the Commission has impermissibly modified MSV's license in violation of Section 316 of the Communications Act. Section 316 and implementing regulations provide that "[n]o such order of modification shall become final until the holder of the license . . . shall have been notified in writing of the proposed action and the grounds and reasons therefor, and shall be given reasonable opportunity, of at least thirty days, to protest such proposed order of modification." 47 U.S.C. § 316; 47 C.F.R. § 1.87.

In the *1996 NPRM*, the Commission provided MSV with clear notice only that it was proposing to modify its license by allowing it to operate in both upper and lower L-band frequencies. Specifically, the Commission stated:

“we [] propose to modify AMSC's authorization to include spectrum in the entire L-band, lower and upper. Therefore, this NPRM shall also serve as notice to AMSC of a proposal to modify its current license, and (in accordance with Section 316 of the Communications Act, and Section 1.87 of the Commission's rules) protests may be filed in response to this notice.”

1996 NPRM at ¶ 17. The Commission never provided MSV with notice of its proposed action to modify MSV's license by reducing its licensed spectrum from 28 MHz to 20 MHz.¹² Thus,

¹²See e.g., *Town Taxi, Inc.*, 17 FCC Rcd 167, ¶ 1 (2002) (issuing order of modification only after providing notice in a prior order); *Jim Crinklaw*, 16 FCC Rcd 14574, at ¶ 10 (2001) (providing 30-day notice of proposed modifications); *Greco Cousins Concrete Corp.*, 15 FCC Rcd 10310, at ¶ 15 (2000) (providing licensee 30-day notice of proposed modification). In fact, the Commission did not even provide a service copy of the *Order* to MSV, as it typically does

MSV never had an opportunity to protest such modification, or had an opportunity to present its case at a hearing, as required by Section 316. As discussed below, there is a substantial and material question of fact as to whether 20 MHz is sufficient spectrum for MSV to provide a viable and competitive service. Accordingly, the Commission must designate the modification for hearing.¹³

In the *Order*, the Commission states that limiting MSV to 20 MHz of L-band spectrum is legally permissible because it is consistent with “whatever reasonable expectations” MSV may have had. *Order* at n.28. MSV disagrees with the Commission’s analysis. MSV may consider the probability of coordinating access to a full 28 MHz in the near future to be low, but MSV nonetheless has always maintained a “reasonable expectation” that it may continue to pursue access to 28 MHz when it has sufficient demand relative to the other systems using the band. Indeed, access to that additional 8 MHz could prove critical to the deployment of a profitable system that uses advanced technology.

While the Commission’s prior statements have discussed MSV’s need for a minimum of 20 MHz, they have never proposed to put any limit on how much spectrum MSV might be able to coordinate, other than the 28 MHz noted in its license. For instance, in 1985, and again in the *1996 NPRM*, the Commission found that 20 MHz of L-band spectrum was “probably the minimum amount needed for a viable operation.” *Id.* Similarly, in the *1996 NPRM*, the Commission noted its previous estimate that a minimum of 20 MHz of spectrum is necessary for

when it modifies licenses pursuant to Section 316. See e.g., *Town Taxi, Inc.*, ¶ 1 n.1; *Jim Crinklaw*, at ¶ 14; *Greco Cousins Concrete Corp.*, at ¶ 20.

¹³See 47 U.S.C §§316(a)(3), 309(e); *Modification of FM or Television Licenses Pursuant to Section 316 of the Communications Act*, 2 FCC Rcd 3327 (1987), at ¶ 5 (“[I]n order to have a hearing under Section 316, any resulting protest must ... set forth a substantial and material question of fact as required by Section 309 of the Act.”).

a viable MSS system and asked commenters to assess whether an economically viable MSS system can be operated in the L-band using a smaller amount of spectrum. *1996 NPRM* at ¶¶ 9-10. The Commission, however, did not ask for comment on this estimate to determine whether it should reduce the amount of MSV's licensed spectrum. Rather, the Commission sought to determine whether it would be feasible to open the lower L-band to another MSS system despite the Commission's prediction that it could not coordinate more than 10 MHz of lower L-band spectrum. *1996 NPRM* at ¶ 10. The Commission never proposed in the *1996 NPRM* to limit MSV's ability to seek to coordinate access to up to 28 MHz of spectrum. To the contrary, the Commission stated:

“[W]e propose to assign all coordinated L-band spectrum as follows: the first 28 MHz of spectrum (14 MHz for Earth-to-space transmissions and 14 MHz for space-to-Earth transmissions) internationally coordinated in the L-band would be assigned to the only U.S. MSS system authorized to operate in the upper L-band, AMSC. AMSC is currently authorized to use 28 MHz of spectrum in the upper L-band for MSS service. If the United States is able to coordinate more than 28 MHz of spectrum in the L-band, we propose to allow other MSS applicants to apply for assignment of those frequencies.”

1996 NPRM at ¶ 1 (footnotes omitted).¹⁴

¹⁴For these same reasons, the Commission has violated the notice provisions of Administrative Procedures Act (“APA”) to the extent its decision to reduce MSV's licensed spectrum is an exercise of its rulemaking authority. 5 U.S.C. § 553. The D.C. Circuit has explained that “notice of a proposed rule must include sufficient detail on its content and basis in law to allow for meaningful and informed comment.” *American Medical Ass'n v. Reno*, 57 F.3d 1129, 1132 (D.C. Cir. 1995). In the *1996 NPRM*, the Commission never proposed to reduce MSV's licensed spectrum. The fact that other commenters suggested that MSV be limited to less than 28 MHz of L-band spectrum does not correct this error. As the D.C. Circuit has explained, “[a]s a general rule, [an agency] must itself provide notice of a regulatory proposal. Having failed to do so, it cannot bootstrap notice from a comment.” *See Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 549 (D.C. Cir. 1983).

This is also consistent with the D.C Circuit opinion upholding the FCC's decision to permit TMI to provide service in the United States.¹⁵ In *AMSC Subsidiary*, the D.C. Circuit explained that a license is "modified for purposes of section 316 when an unconditional right conferred by the license is substantially affected."¹⁶ MSV's unconditional right is to seek to coordinate access to as much as 28 MHz. The D.C. Circuit, in contrast, held only that the Commission had never promised MSV any particular outcome in the coordination process. *Id.* at 1159. The instant *Order* does not merely reduce MSV's chances of obtaining spectrum in the international coordination process. Rather, the *Order* unequivocally limits the amount of L-band spectrum MSV can coordinate to 20 MHz, even if it is able to demonstrate a need for 28 MHz.

B. The Commission Has Failed to Demonstrate that Limiting MSV to 20 MHz of L-band Spectrum Will Serve the Public Interest

Section 316 permits the Commission to modify a station license if such action will promote the public interest, convenience and necessity. *See* 47 U.S.C. §316(a)(1); *see also* 47 C.F.R. §1.87. In addition, in any case in which a hearing is conducted pursuant to Section 316, the Commission has both the burden of proceeding with the introduction of evidence and the burden of proof. *See* 47 U.S.C. § 316(b). Consistent with the principles underlying Section 316, the Commission has no prior history of willingly taking spectrum away from a licensee that has invested in and built its licensed facilities and is operating in accordance with the Commission's rules.

¹⁵*See Order* at n.28 (citing *AMSC Subsidiary Corporation v. FCC*, 216 F.3d 1154 (D.C. Cir. 2000)).

¹⁶*AMSC Subsidiary Corporation*, 216 F.3d at 1158-59 (citing *P&R Temmer v. FCC*, 743 F.2d 918, 927-28 (D.C. Cir. 1984)).

The Commission has failed to demonstrate that taking from MSV the potential to coordinate access to an additional 8 MHz of spectrum will serve the public interest. The Commission explains that it reduced MSV's licensed L-band spectrum from 28 MHz to 20 MHz because "the record indicates that the system is capable of providing an economically viable MSS service with as little as 20 MHz" and that the benefit of increased competition from reserving additional spectrum for another L-band system outweighs any benefits of assigning additional L-band spectrum to MSV. *Order* at ¶ 19. Neither of these justifications are legitimate.

First, MSV may need access to 28 MHz of spectrum to adequately and profitably serve its present and projected customer needs. As the Commission recognizes, MSV constructed and now operates a system designed to operate with 28 MHz of spectrum, spending \$900 million in the process. *Order* at ¶ 19. MSV fully expected to be able to use this system to its full capacity to fulfill its customers' needs. While demand for MSS has not materialized to the extent MSV had hoped, it is nonetheless confident that its customer base will continue to grow, including customers who demand high bandwidth services, thereby increasing MSV's need for spectrum. With respect to MSV's next-generation system, the Commission notes that it "expects second generation systems posed by Motient and other future applicants to be state-of-the-art satellites capable of operating on less spectrum." *Order* at n.41. While the Commission is correct in assuming that MSV's next-generation system will be state-of-the-art and more spectrum efficient, it is incorrect for the Commission to assume that this system will require less spectrum. To the contrary, MSV's next-generation system will attract a larger subscriber base than its current system, primarily because it expects to be able to offer consumers small, handheld terminals and service that is much more useful in urban areas and more affordable. MSV needs

access to up to 28 MHz of spectrum in order to have the capacity and the economies of scale that will help it to reduce prices and attract customers. It would be poor policy for the Commission to take away licensed spectrum because a licensee has invested in and has developed a more attractive service that uses more spectrum efficient technology.

Second, the Commission's purported justification of increasing competition in the MSS market is unavailing. As an initial matter, there is no evidence in the record to support any conclusion that the MSS market is not competitive.¹⁷ Since the 1996 NPRM was issued, both Big LEO systems have begun service, the Commission has authorized foreign systems to provide MSS in the L-band in the United States, and the Commission licensed eight new MSS systems in the 2 GHz band. Inmarsat, MSV's principal competitor, has launched newer generation satellites, for which it has the legal right to coordinate access to as much of the upper and lower L-band as it chooses. Thus, the Commission's general interest in promoting competition hardly justifies taking spectrum from an incumbent licensee.

II. SPECTRUM LICENSED TO THE CANADIAN L-BAND MSS SYSTEM SHOULD NOT BE ATTRIBUTED TO MSV IN CALCULATING MSV'S L-BAND SPECTRUM CAP

In the *Order*, the Commission states that it will consider licensing other L-band MSS systems if it can coordinate 20 megahertz for MSV or if MSV "acquire[s] access to at least 20 megahertz of L-band spectrum through other means, *i.e.* its proposed merger with TMI." *Order* at ¶ 19. MSV urges the Commission to reverse this decision to the extent it means that

¹⁷Ironically, just two months before deciding to cap MSV's L-band spectrum at 20 MHz to promote competition in the MSS marketplace, the Commission decided to lift the spectrum cap applicable to terrestrial wireless licensees despite concerns that such action would decrease competition. See 2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services, *Report and Order*, 16 FCC Rcd 22668 (2001).

Canadian-coordinated L-band spectrum will be attributed to MSV for purposes of calculating MSV's spectrum cap.

As initial matter, MSI's relationship with TMI is neither a "merger" nor is a merger "proposed." In November 2001, after receiving Commission approval, MSI entered into a joint venture with TMI forming MSV and MSV Canada.¹⁸ MSV is the now the licensee of AMSC-1, the U.S.-licensed L-band MSS satellite, and MSV Canada is the licensee of MSAT-1, the Canadian-licensed L-band MSS satellite. MSV and MSV Canada are owned, controlled and operated by two separate corporate entities each of which has its own controlling shareholders. In the case of the MSV, its shareholders are composed of several parties, none of whom have a controlling interest. In the case MSV Canada, TMI remains the controlling shareholder. MSV and MSV Canada are distinct entities and their relationship cannot justify attributing MSV Canada's coordinated L-band spectrum to MSV for purposes of calculating MSV's spectrum cap.

Any spectrum cap imposed on MSV must apply only to MSV and its U.S.-coordinated spectrum. MSV Canada is licensed by Canada to serve Canadian users and needs access to sufficient spectrum to serve these users. The Commission cannot unilaterally limit the amount of spectrum MSV Canada can coordinate. By attributing MSV Canada's spectrum to MSV, however, the *Order* would have just this impact. For example, if Industry Canada coordinates 26 MHz of L-band spectrum for MSV Canada through the international coordination process, the *Order* would apparently attribute that spectrum to MSV and require MSV Canada to relinquish 6 MHz to ensure that MSV is in compliance with its 20 MHz spectrum cap. Leaving aside the thorny issue of whether a Canadian-licensed satellite system will agree to relinquish spectrum to

¹⁸See Motient Services Inc., TMI Communications and Company, LP, and Mobile Satellite Ventures Subsidiary LLC, *Order and Authorization*, DA 01-2732 (Nov. 21, 2001).

allow a U.S.-licensed system to comply with Commission policies, such a result would leave MSV Canada with a shortage of spectrum and leave MSV without any U.S-coordinated spectrum to use with AMSC-1.

Similarly, if the Commission coordinates 13 MHz of L-band spectrum for MSV and Industry Canada coordinates 13 MHz of L-band spectrum for MSV Canada through the international coordination process, the *Order* would apparently attribute 26 MHz of L-band spectrum to MSV. The *Order* would require MSV and MSV Canada to reduce their combined total of coordinated spectrum by 6 MHz, despite the fact that the Commission and Industry Canada have demonstrated a need for this spectrum in international coordination negotiations.

III. ANY L-BAND SPECTRUM CAP IMPOSED ON MSV MUST APPLY TO ALL FOREIGN-LICENSED L-BAND MSS SYSTEMS THAT ACCESS THE U.S. MARKET

If the Commission does not reverse its decision to apply a 20 MHz L-band spectrum cap on MSV, then Commission policies require that the same cap apply to Inmarsat and any other, foreign-licensed systems that seek to access the U.S market. In adopting policies governing the ability of foreign-licensed satellite systems to provide service in the U.S.,¹⁹ the Commission was careful to require “non-U.S. satellite operators to comply with all Commission rules applicable to U.S. satellite operators” because “[t]o do otherwise would place U.S. and foreign operators on an uneven competitive footing.”²⁰

¹⁹Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, *Report and Order*, 12 FCC Rcd 24094 (1997) (“*DISCO II Order*”).

²⁰*Id.* at ¶ 173 (“In general, we will require non-U.S. satellite operators to comply with all Commission rules applicable to U.S. satellite operators. To do otherwise would place U.S. and foreign operators on an uneven competitive footing when providing identical satellite services in the United States and would defeat our public policy objectives in adopting these service rules in the first place. . . We find that this overall approach does not violate U.S. national treatment

Consistent with these principles, the Commission's apparent determination that MSV (and possibly MSV Canada) be limited to no more than 20 MHz of coordinated spectrum must be applied fairly to all MSS systems that seek to access the U.S. market. The ability of MSV to compete with foreign-licensed space station operators will be adversely impacted if the foreign-licensed space stations are permitted to access more spectrum than they can. The only way to keep the playing field level is to impose the same spectrum access limitations on foreign-licensed space stations as the Commission imposes on those it licenses. If the Commission's spectrum management policy is to limit L-band space station licensees to no more than 20 MHz of coordinated spectrum, the same policy must be applied to all operators in the United States, regardless of whether their space stations are licensed by the Commission or by a foreign administration. The new 20 MHz limit is also similar to a technical restriction, such as 2 degree spacing. Commission policy requires foreign-licensed systems to comply with any technical requirements that are imposed on Commission-licensed systems. *DISCO II Order* at ¶ 156. Moreover, the purpose of the 20 MHz cap imposed on MSV is to permit the Commission to consider licensing additional space stations, a goal that will be defeated if the other foreign-licensed satellites have unlimited access to any spectrum not used by MSV.

IV. THE COMMISSION SHOULD REVISE SLIGHTLY ITS RULES FOR PRIORITY AND PREEMPTIVE ACCESS IN THE LOWER L-BAND

In the *Order*, the Commission adopts rules establishing priority and preemptive access standards for MSS in the lower L-band, as required by Footnote US315 to Section 2.106 of the Commission's rules. *Order* at ¶¶ 30-41. MSV requests that the Commission clarify Sections 25.136(e)(9) and (10) of its adopted rules pertaining to the minimum capabilities for land earth

obligations because we will be treating foreign service suppliers identically to U.S. service suppliers with respect to their provision of service within the United States.”).

stations (“LESs”) associated with lower L-band mobile earth stations (“MESs”) to ensure compliance with priority and preemptive access requirements. 47 C.F.R. § 25.136(e)(9)-(10). Sections 25.136(e)(9) and (10) should specify requirements which are applicable only for LESs that have a requirement to handle maritime distress and safety communications. As currently written, however, the rules apply to all LESs associated with a lower L-band MES, regardless of whether the station is required to handle maritime distress and safety communications. Not every L-band MSS operator, including MSV, is required to handle maritime distress and safety communications. Thus, MSV requests that the Commission clarify Sections 25.136(e)(9) and (10) in the following manner (added language is underlined):

(9) Each LES with a requirement to handle maritime distress and safety data communications shall be capable of interrupting, and if necessary, preempting ongoing routine traffic from an MES in order to complete a maritime distress, urgency or safety call to that particular MES.

(10) Each LES with a requirement to handle maritime distress and safety data communications shall be capable of automatically turning off one or more of its associated channels in order to complete a maritime distress, urgency or safety call.

These revisions are consistent with Sections 25.136(d)(2) and (8) of the adopted rules, which specifically apply only to MESs that are required to handle maritime distress and safety communications.²¹

²¹See 47 C.F.R. § 25.136(d)(2) (“Each MES *with a requirement to handle maritime distress and safety data communications* shall be capable of either (1) recognizing message and call priority identification when transmitted from its associated Land Earth Station (LES) or (2) accepting message and call priority identification embedded in the message or call when transmitted from its associated LES and passing the identification to shipboard data message processing equipment.”) (emphasis added); 47 C.F.R. § 25.135(d)(8) (“Each MES *with a requirement to handle maritime distress and safety communications* shall have the capability within the station to automatically preempt lower precedence traffic.”) (emphasis added).

Conclusion

For the reasons stated above, MSV requests that the Commission clarify and reconsider its *Order* in the above-captioned proceeding as requested herein.

Respectfully submitted,

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