

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

In the Matter of)	
)	
Review of the Spectrum Sharing Plan Among)	IB Docket No. 02-364
Non-Geostationary Satellite Orbit Mobile Satellite)	
Service Systems in the 1.6/2.4 GHz Bands)	
)	
Amendment of Part 2 of the Commission’s Rules)	ET Docket No. 00-258
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction of)	
New Advanced Wireless Services, including)	
Third Generation Wireless Systems)	

**PARTIAL OPPOSITION
OF THE ASSOCIATION OF HOME APPLIANCE MANUFACTURERS
TO JOINT MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION FOR LEAVE TO FILE SURREPLY**

The Association of Home Appliance Manufacturers (“AHAM”) hereby submits the following Partial Opposition to the Joint Motion to Dismiss or, in the Alternative, Motion for Leave to File Surreply (“Motion”) filed by the Wireless Communications Association International, Inc., Sprint Corporation and Nextel Communications, Inc. (collectively, the “BRS Parties”).^{1/} The BRS Parties ask the Federal Communications Commission (“FCC” or “Commission”) to dismiss the pleadings submitted by AHAM and the AHAM Members in the above referenced proceedings on or about November 8, 2004.^{2/} In the alternative, the BRS Parties ask the FCC for permission to submit a surreply to address the matters raised by AHAM.

^{1/} AHAM submits this Partial Opposition on behalf of manufacturers of microwave oven products, some of whom participated separately in this proceeding (collectively, the “AHAM Members”). As a matter of convenience, AHAM refers to itself and the AHAM Members collectively as “AHAM” and the replies submitted by itself and the AHAM Members as the “AHAM Replies” unless otherwise stated.

^{2/} The pleadings submitted by AHAM and the AHAM Members were filed with the FCC on November 5, November 8 and November 9, 2004.

The BRS Parties do not adequately justify why the FCC should dismiss the AHAM Replies. Even if there were adequate bases on which to grant the BRS Parties' request, it is contrary to the public interest for the FCC to do so. Instead, the FCC should consider the AHAM Replies and permit the BRS to submit a surreply.

AHAM recognizes that the AHAM Replies might have been submitted as oppositions to the petitions for reconsideration of the BRS Parties in this proceeding. However, the FCC should nevertheless fully consider the AHAM Replies. Contrary to the BRS Parties' inference, the Commission does not routinely dismiss Replies that may have been submitted as oppositions to petitions for reconsideration. In the one instance cited by the BRS Parties, the FCC's decision to dismiss a Reply was based in part on its finding that the Reply "raise[d] no new arguments and would not change the outcome of this proceeding."^{3/} In this instance, AHAM has presented new and critical issues that must be addressed by the FCC in its consideration of the relief sought by the BRS Parties.

Indeed, more relevant to a determination of whether the FCC should consider the AHAM Reply is the Commission's ability to consider late submitted pleadings when the consideration of those pleadings is in the public interest.^{4/} Only a perverse assessment of the public interest would result in a determination that the FCC should not consider the impact of the BRS Parties' petitions for reconsideration on the approximately 95 million microwave ovens in the United States and consumers' ability to continue to purchase microwave ovens in the future. Instead of granting the BRS Parties' request, which would have the effect of promoting the BRS Parties'

^{3/} See *Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Service (Second Computer Inquiry)*, Memorandum Opinion and Order, 59 Rad. Reg. 278 at ¶ 18 (1985).

^{4/} See, e.g., *In the Matter of Donna J. Olson, Automatic Cancellation of License for Station WPFN331*, Order, 18 FCC Rcd. 5075 (2003).

narrow interests at the expense of millions of users and consumers of microwave ovens, the FCC should consider the AHAM Replies.

Unlike the BRS Parties, AHAM believes that a full and meaningful consideration of the issues raised by the AHAM Replies is in the public interest. Accordingly, it does not object to the BRS Parties' alternative request that it be provided with an opportunity to submit a further pleading that addresses the matters raised in the AHAM Replies.

Therefore, AHAM submits the foregoing Partial Opposition and requests that the FCC act in accordance with the views expressed therein.

Respectfully submitted,

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December 6, 2004

CERTIFICATE OF SERVICE

I, Karen Smith, a secretary in the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., hereby certify that on this 6th day of December, 2004 a copy of the foregoing Partial Opposition was served as indicated on the following:

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