

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

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

To: The Commission

**PARTIAL OPPOSITION TO JOINT MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION FOR LEAVE TO FILE REPLIES**

Fusion UV Systems, Inc. ("Fusion"), by its attorneys, hereby responds to the Joint Motion to Dismiss or, In the Alternative, Motion for Leave to File Replies ("Joint Motion") filed by The Wireless Communications Association International, Inc., Sprint Corporation, and Nextel Communications, Inc. (collectively, the "Movants"). Movants oppose a grant of Fusion's Motion for Leave to Accept Late-Filed Opposition, and seek dismissal of the companion Consolidated Opposition. In the alternative, they seek leave to file replies to the Consolidated Opposition.

In support of their Motion to Dismiss, Movants argue that Fusion has not justified the late-filing. However, barely one paragraph out of the entire, five page pleading discusses this issue; rather, almost the entire document is devoted to Movants' view of the merits (including their notion that changing the fundamental basis upon which Industrial, Scientific and Medical

("ISM") devices have operated in the band for decades represents a "fair accomodat[ion]" and a "compromise"). Id. at 3.¹

It is, of course, within the sound discretion of the Commission whether to grant a Motion such as Fusion's. In reaching that determination, the Commission will consider not only the timing of the filing, but also the contribution that the opposition makes to the development of a full and complete record. Fundamentally, the decision turns on whether acceptance of the Opposition would result in a better decision in the public interest.

There is no question but that Fusion's Opposition helps complete a significant gap in the record, namely the effect of the Movants' requested relief on the myriad of ISM devices utilized in industrial settings. For this reason, acceptance of the Opposition is very much in the public interest. Even the Movants do not argue otherwise -- or for that matter argue any prejudice to themselves from its acceptance.

Movants cite Applications of Mobile Radio Service, 17 FCC Rcd 1520, 1521 n. 21(2002) for the proposition that late-filed oppositions are "subject to dismissal." Id. at note 11. The principle is unexceptional, but hardly advances the analysis. Mobile Radio Service was an adjudication, not a rulemaking raising broad issues of policy.² By contrast, the instant case raises issues of far-reaching import for national communications policy inasmuch as Movants seek a radical change in ISM Rules which have been in effect for decades, and Fusion's Opposition

¹ As noted previously in Fusion's Consolidated Opposition, the relief sought by Movants would effect a radical change in decades old ISM policies, and cause serious damage to industrial and consumer interests.

² For completeness it might also be noted that the respondent in Mobile Radio Service failed to provide "any explanation" (id. at note 21), and the dismissal was inconsequential inasmuch as the Petition for Reconsideration to which it was addressed was itself dismissed on procedural grounds in the same Order.

provides important information in respect of those issues.³ Accordingly, to the extent the Joint Motion opposes acceptance of Fusion's Consolidated Opposition it is without merit.

That said, however, Fusion interposes no objection to Movants' alternative request, namely that they be allowed to reply to the Consolidated Opposition. This would be consistent with the approach followed recently by the International Bureau in allowing Movants to reply to filings by the Association of Home Appliance Manufacturers et al in this proceeding. E-Mail of December 7, 2004 in IB Docket No. 02-364. It is also consistent with fundamental fairness.

Accordingly, Fusion's Consolidated Opposition should be accepted, but the Movants allowed to reply thereto.

Respectfully submitted,

FUSION UV SYSTEMS, INC.

By: 

William K. Keane

Sarah E. Rogers

Of Counsel:

Stephen M. Ryan, Esq.
MANATT, PHELPS & PHILLIPS, LLP
One Metro Center
700 12th Street N.W.
Suite 1100
Washington, D.C. 20005

DUANE MORRIS LLP
1667 K Street, N.W.
Suite 700
Washington, D.C. 20006-1608

Its Counsel

February 14, 2005

³ To like effect is the other case cited by Movants, namely Dave's Communications, Inc., 16 FCC Rcd 21343 (WTB 2001). Again, the context did not involve a rulemaking looking to set public policy. For that matter, the party in question failed, unlike Fusion, to even "request ... an extension" (*id.* at para. 5). It is due to the need to ensure broad public participation on matters of policy formulation that ex parte filings are freely allowed in rulemakings after the formal comment period has closed.

CERTIFICATE OF SERVICE

I, Tina Long, hereby certify that I have caused the attached Partial Opposition to Joint Motion To Dismiss Or, In The Alternative, Motion for Leave to File Replies, to be deposited in the U.S. Mail, first class postage prepaid, this 14th day of February 2005, addressed as follows:

Paul J. Sinderbrand
Wilkinson Barker Knauer, LLP
2300 N Street, N.W.
Suite 701
Washington, D.C. 20037-1128

J.B. Hoyt
Whirlpool Corporation
Director, Regulatory Affairs
& State Government Relations
2000 M-63, North
MD 3005
Benton Harbor, MI 49022

Luisa L. Lancetti
David Munson
Sprint Corporation
401 9th Street, N.W.
Suite 400
Washington, D.C. 20004

Earl F. Jones
Senior Counsel
GE Consumer & Industrial
Appliance Park AP2-225
Louisville, KY 40225

Russell H. Fox
Charles A. Samuels
Stefani V. Watterson
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

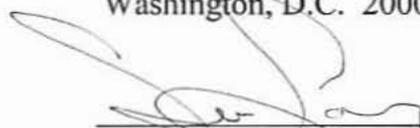
Peter M. Fannon
Vice President
Technology Policy & Regulatory Affairs
Matsushita Electric Corporation of America
1130 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

Lawrence R. Krevor
George (Trey) Hanbury
Senior Counsel, Government Affairs
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

James G. Harralson
Charles P. Featherstun
BellSouth Corporation
1155 Peachtree Street, N.W., Suite 1800
Atlanta, GA 30309-3610

Daniel Kim
General Manager
LG Electronics Inc.
2000 Millbrook Drive
Lincolnshire, IL 60069

Stephen E. Coran
Rini Coran, P.C.
1501 M Street, N.W.
Suite 1150
Washington, D.C. 20005



Tina Long