

April 22, 2005

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Comments of First Avenue Networks
ET Docket No. 95-183 and PP Docket No. 93-253
37/42 GHz Band Proceeding

Dear Ms. Dortch:

First Avenue Networks, Inc. (“FAN”), by undersigned counsel, hereby submits these *ex parte* comments in response to the *ex parte* submissions of Northrop Grumman Space & Mission Systems Corporation (“NGST”)¹ and Winstar Communications (“Winstar”),² filed on January 21, 2005, and March 21, 2005, respectively. In its *ex parte* submission, NGST proposes that if the Federal Communications Commission (“FCC” or “Commission”) decides to defer temporarily the licensing and auctioning of fixed millimeter wave spectrum at this time as FAN, and Winstar have recommended, the Commission should proceed in establishing the rules for the operation of earth stations in the 37.5-38.6 GHz portion of the 37/42 GHz bands and require future fixed service licensees to protect any earth stations that are operating within the band. NGST further suggests that licensing for the earth stations be done on a non-auction basis for non-exclusive Economic-Area (“EA”) wide licenses, excluding the 10 most populous EAs. FAN agrees with Winstar that NGST’s proposed new rules would not be in the public interest. Rather, they amount to nothing more than a backdoor way for fixed satellite services (“FSS”) to obtain additional spectrum rights in a band allocated to millimeter wave services, and, thus, should be rejected by the Commission.

¹ *Ex Parte* Submission of Northrop Grumman Space & Mission Systems Corporation, ET Docket No., 95-183 and PP Docket No. 93-253 (filed January 21, 2005) (“NGST *Ex Parte*”).

² *Ex Parte* Submission of Winstar Communications, ET Docket No., 95-183 and PP Docket No. 93-253 (filed March 29, 2005) (“Winstar *Ex Parte*”).

As the Commission is well aware, its decision to designate the 37.0-40.0 GHz band for fixed millimeter wave services (“37 GHz Millimeter Wave band”) and the 41.0-42.0 GHz band for fixed satellite services (“42 GHz FSS Band”) was not hastily made, but instead was derived after careful consideration of the extensive record presented in a lengthy rulemaking that lasted almost seven years.³ As the Commission has recognized, this band allocation represents a delicate balance of interests between the fixed wireless and satellite services that was achieved as part of a consensus plan that emerged from 2000 World Radiocommunications Conference (WRC-2000) in Istanbul, Turkey.⁴

Of the 2 GHz of spectrum allocated to fixed millimeter wave service, the Commission designated a mere 100 MHz of spectrum for co-primary FSS use. This ratio is reflective of millimeter wave’s status as the principal service in this band. The rules are not intended to allow for anything other than very limited FSS use. Importantly, recognizing the significant interference issues between millimeter wave and FSS operations, the FCC restricted the use of that 100 MHz of spectrum by FSS providers to “gateway” operations with lower power-flux density (“PDF”) limits in order to minimize interference by FSS operations on fixed millimeter wave operations in that portion of the 37 GHz Millimeter Wave Band.⁵

Like Winstar, FAN is seriously concerned about NGST’s proposal to proceed with the licensing of this 100 MHz of spectrum to FSS on a non-auctioned, grandfathered basis prior to an open auction for the rest of the 37 GHz Millimeter Wave Band. This proposal would defeat the intent of the Commission’s *38/42 GHz Second Report and Order* by awarding satellite operations a significant preference over future millimeter wave operations in a band specifically allocated for millimeter wave use. Notably, in light of the significant interference issues between millimeter wave and FSS operations, it is likely that the licensing of FSS operations on a protected, non-auctioned basis in the 37 GHz Millimeter Wave Band would have a negative impact on the value of the rest of the neighboring 37 GHz Millimeter Wave Band Spectrum that would be subject to a future auction. Such actions would only serve to undermine the Commission’s efforts to recover the true value of the millimeter wave spectrum to the public at auction. Furthermore, while the amount of the co-primary FSS spectrum may be small in comparison to the rest of the 37 GHz Millimeter Wave Band, it is precisely because of its small size that the immediate licensing of satellite operations in that spectrum cannot be justified given the huge implications that such actions could have on the value of this spectrum and future operations in the band specifically allocated for millimeter wave use.

Moreover, although NGST may characterize its proposal for the licensing of satellite services in the 37 GHz Millimeter Wave Band as an issue of timing, it is, in reality, an issue of

³ See 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; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5-42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9-47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0-38.0 GHz and 40.0-40.5 GHz for Government Operations; IB Docket No. 97-95, Report and Order, 18 FCC Rcd 25,428 (2003) (“*38/42 GHz Second Report and Order*”).

⁴ *Id.* at ¶¶ 12-17.

⁵ *Id.* at 23-41.

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whether the FCC should enable NGST to make substantive changes to the spectrum rights already established by the FCC as part of its *38/42 GHz Second Report and Order*. The Commission should reject such an inappropriate result.

If you have any questions regarding these filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/

Andrew D. Lipman

Catherine Wang

cc: Dean Johnson (First Avenue)