

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
 )  
Amendment of Part 2 of the Commission’s Rules )  
to Allocate Spectrum Below 3 GHz for Mobile ) ET Docket No. 00-258  
and Fixed Services to Support the Introduction )  
of New Advanced Wireless Services, including )  
Third Generation Wireless Systems )

**COMMENTS OF TMI AND TERRESTAR**

These Comments are filed on behalf of TMI Communications and Company, Limited Partnership (“TMI”) and its affiliate, TerreStar Networks Inc. (“TerreStar”)<sup>1</sup>, in response to the Commission’s *Eighth Report and Order, Fifth Notice of Proposed Rule Making and Order*, ET Docket No. 00-258, FCC 05-172, released September 29, 2005 (“*Fifth Notice*”).

TMI/TerreStar support harmonization of the cost-sharing procedures available to 2 GHz MSS and Advanced Wireless Service (AWS) operators that relocate incumbent fixed microwave (FS) licensees by authorizing MSS providers also to submit reimbursement claims to a neutral clearinghouse. The clearinghouse option should remain voluntary, however. MSS operators should retain the right to negotiate their own agreements for reimbursement with any AWS licensee.

It is also important that any new clearinghouse procedures available to 2 GHz MSS parties apply equally to relocation costs incurred to address interference from MSS Ancillary Terrestrial Component (ATC) facilities as well as MSS space segment facilities. In addition,

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<sup>1</sup> TMI Communications, a Canadian entity, holds a Letter of Intent (LOI) authorization to provide U.S. mobile satellite services (MSS) in the 2 GHz band. See *TMI Communications and Company, Limited Partnership and TerreStar Networks, Inc.* 19 FCC Rcd. 12603 (2004). TerreStar is the prospective assignee of that authorization and, pursuant to an agreement with TMI, has contracted with Space Systems/Loral Inc. to manufacture a satellite that meets the terms of TMI’s Canadian and U.S. MSS authorizations.

consistent with the procedures proposed for cost-sharing among AWS licensees, MSS operators should be entitled to reimbursement from any later licensed AWS licensee that would have been predicted to cause interference to a relocated link under a standard proximity test (i.e., just as for AWS to AWS interference, a fixed and easily administered standard shall apply as opposed to case-by-case analysis).

As detailed in Section II., the protection of MSS interests also requires some other modifications of the FCC's prior Part 24-based clearinghouse regime for sharing FS relocation costs. Among other things, MSS operators should be granted the same rights to oversee the clearinghouse as AWS licensees. In addition, the reimbursement rules should be operative through at least 2014 to assure that MSS operators can obtain reimbursement for relocating FS links so long as these links retain their co-primary status; and any modified MSS reimbursement procedures should be expressly referenced or written into Part 101 of the FCC's Rules.

## **I. Background**

Prior to the allocation of the 2165-2200 MHz band to MSS and AWS, the band was allocated to the fixed and mobile services. It is currently populated by both common carrier and private FS microwave facilities. Typically, these FS operations are configured to provide two-way microwave communications with FS links in the 2165-2200 MHz band paired with links in the 2115-2150 MHz band. If one of the paired links (e.g., at 2180-2200 MHz) is relocated, it may be necessary for technical reasons to relocate the other link of the two-way FS microwave system.<sup>2</sup>

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<sup>2</sup> See generally *Amendment of Part 2 of the Commission's Rules 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*, ET Dok. No. 00-258, *Second Report and Order*, 17 FCC Rcd. 23193 (2004), (*AWS Second Report and Order*). The relocation of FS microwave links commonly involves the coordination of replacement spectrum in the 4 GHz band (or higher) and the retuning or replacement of the radio equipment at each end of the microwave path. In some cases, new supporting towers must also be constructed (e.g., if the end point of a path is moved).

Upon authorizing MSS downlinks (space-to-earth transmission) in the 2165-2200 MHz band, the Commission recognized that it was creating the potential for interference from such downlinks into FS receivers, and from FS transmitters into MSS handsets tuned to the downlink frequencies.<sup>3</sup> Later, upon authorizing MSS operators to apply for ATC facilities in the MSS downlink band, the agency noted that ATC base stations would provide a further source of potential interference to incumbent FS operators and *vice versa*.<sup>4</sup> MSS operators may therefore be required to relocate FS links from the downlink band (and paired links in the 2110-2150 MHz band) to moot potential interference from either MSS space segment or ATC facilities.

The FCC initially adopted rules in 2000 for sharing the FS relocation costs incurred by MSS operators with other licensees that are benefited - namely AWS providers which are subsequently licensed to use paired channels in the 2110-2150 MHz band.<sup>5</sup> These rules were later modified in 2003 to reflect the agency's new MSS ATC policies and are now codified at Section 101.82 of the agency's rules (formerly Section 101.99).<sup>6</sup> It is these cost sharing rules which the FCC now proposes to augment. Currently, they provide MSS with the following reimbursement regime.

Where an initial MSS licensee relocates both links of a paired FS microwave link, the MSS licensee is entitled to reimbursement of 50% of its relocation costs from any subsequent licensee(s) that benefit from the relocation (i.e., that would have been required to relocate the

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<sup>3</sup> *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, ET Docket No. 95-18, *Report and Order and Notice of Rulemaking*, 18 FCC Rcd. 1962 (2003), (*ATC Report and Order*).

<sup>4</sup> See e.g., *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band and the 1.6/2.4 GHz Band*, IB Docket No. 01-185, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 15532, 15561-62 (2001) (*ATC Notice*).

<sup>5</sup> See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service*, ET Docket No. 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, 15 FCC Rcd. 12315 (2000) (*2 GHz MSS Second Report and Order*).

<sup>6</sup> See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Services*, ET Docket No. 95-18, *Third Report and Third Memorandum Report and Order*, 18 FCC Rcd. 23638 (2003) (*2 GHz MSS Third Report and Order*).

same fixed microwave link).<sup>7</sup> Total reimbursable costs may not exceed \$250,000 per relocated pair of microwave links plus an additional \$150,000 if a new or modified tower structure is required.<sup>8</sup> The FCC's current rules also provide that the MSS licensee must be reimbursed before the later entering licensee can begin service unless it can show it would not have caused interference to the relocated link.<sup>9</sup>

## **II. The Public Interest Is Served By Permitting MSS Licensees To Use A Neutral Clearinghouse To Obtain Reimbursement of Authorized FS Relocation Costs**

While the current rules establish an unambiguous basis for sharing relocation costs among the initial MSS and subsequent AWS licensees, the *Fifth Notice* recognizes that the rules do not provide an express mechanism for implementing this regime. TMI/TerreStar consequently support the FCC's proposal to grant MSS licensees the right (but not the obligation) to obtain reimbursements through the Part 24 based clearinghouse arrangements that have been proposed for resolving claims for shared relocation costs among AWS licensees. Providing MSS with the same reimbursement rights is likely to reduce the transaction costs for all concerned; facilitate the identification of potential AWS contributors; reduce disputes between MSS and AWS licensees over reimbursement; and encourage the simultaneous clearance of paired links with attendant benefits for both MSS and AWS consumers.

The *Fifth Notice* contemplates that the clearinghouse procedures for MSS-AWS cost sharing would be derived from the Part 24 reimbursement scheme adopted in 1996 for sharing the cost of relocating incumbent FS links in the 1850-1990 MHz band among Personal

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<sup>7</sup> 47 C.F.R. § 101.82(a).

<sup>8</sup> *Id.*, § 101.82(c).

<sup>9</sup> *Id.*, Section 101.82 (b). However, as discussed below, TMI/TerreStar believe that a subsequent AWS licensee should be automatically subject to an MSS reimbursement claim if the newly licensed AWS facility has benefited from relocation of the FS link under a standard proximity test (i.e., the new AWS facility is sufficiently proximate to the relocated link).

Communications Service (PCS) licensees.<sup>10</sup> The FCC has simultaneously asked whether these same Part 24 procedures should be applied to apportion and settle FS relocation costs among multiple AWS licensees in the 2160-2175 MHz band.<sup>11</sup> However, the Part 24 cost-sharing regime proposed as a model for handling both MSS-AWS and AWS-AWS reimbursements sunset on April 4, 2005.<sup>12</sup> The terms of these PCS era rules consequently will need to be expressly restated in any updated rules adopted by the FCC in this and related proceedings (e.g., the *AWS-2 Service Rules NPRM*)<sup>13</sup> And, given that the FCC must now readopt cost-sharing rules for both the AWS and MSS *de novo*, the Commission should ensure that the new rules treat MSS operators equitably too.

First, the rules should confirm that, under Section 101.82, an MSS licensee's reimbursement rights apply to FS links that are relocated to moot potential interference from an ATC or satellite facility. While this policy is implicit in the FCC's prior orders, the current rule section does not expressly refer to MSS ATC licensees.<sup>14</sup> To remedy this deficit, the FCC

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<sup>10</sup> See *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, *First Report and Order and further Notice of Proposed Rulemaking*, 11 FCC Rcd. 8825 (1996). (*Microwave Cost Sharing First R&O and FNPRM*).

<sup>11</sup> It also bears noting that the FCC has previously asked whether it should apply the Part 24 cost-sharing and clearinghouse rules to AWS licensees which relocate FS incumbents in other portions of the AWS band at 2110-2150 MHz and 2175-2180 MHz. At this writing, the foregoing docket remains pending. See *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz, and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 04-356, WT Docket No. 02-353, *Notice of Proposed Rulemaking*, 19 FCC Rcd 19263, ¶¶ 46-49 (2004) (*AWS-2 Service Rules NPRM*). However, given that any MSS-AWS reimbursement procedure will be based in significant part on the AWS-AWS cost-sharing procedures, TMI/TerreStar believe that the Commission would be well advised to simultaneously resolve both AWS rulemaking dockets in a uniform fashion.

<sup>12</sup> See 47 C.F.R. § 24.253.

<sup>13</sup> For this and other reasons stated herein, and to avoid any doubt regarding the validity of any new reimbursement regime, TMI/TerreStar also suggest that any changes be expressly incorporated into Section 101.82 of the Rules.

<sup>14</sup> Section 101.82, which has not been substantially changed since January 2003, currently refers to an "ET licensee (including Mobile Satellite Service licensees)" but does not expressly refer to MSS ATC licensees. Nevertheless, in November 2003, when this section was renumbered, the FCC stated, that "consistent with the approach we adopted for MSS satellite operations in the *MSS Second Report and Order*, were an initial MSS licensee of terrestrial ATC operations relocates both links of a paired FS microwave link, any subsequent licensee(s) that benefit from the relocation will be required to participate in the reimbursement of the initial licensee (See Former Section 101.99 renumbered herein as Section 101.82, *infra* Appendix B)." *2 GHz MSS Third Report and Order*, 18 FCC Rcd. 23638, ¶71.

should modify Section 101.82 to state that any new reimbursement procedures for MSS licensees, apply to both MSS and MSS-ATC licensees. However, as discussed above, the new clearinghouse procedures proposed here should be optional; MSS operators should retain the right to negotiate their own agreements for reimbursement with any AWS licensee.

Second, in determining whether an AWS licensee is subject to a reimbursement claim, the FCC should expressly harmonize the AWS-AWS and MSS-AWS standards. That is, the reimbursement obligation of an AWS licensee to the MSS would depend upon the fixed and easily administered AWS-AWS “Proximity Threshold Test” set forth in Section 24.247 of the Commission’s rules and not the MSS-MSS interference showing criteria stated in Section 101.82. TMI/TerreStar believe that adopting such criteria is essential for the efficient operation of the clearinghouse and will benefit all concerned by establishing clear criteria for settling reimbursement obligations that do not require case-by-case interference analysis with the resulting potential for dispute.<sup>15</sup> Indeed, a standard, rule-based approach is essential to ensure an equitable reimbursement regime because there is no reason to believe that potential disputes over whether an AWS licensee would actually have interfered with a relocated FS microwave link is less likely for links that are relocated by an MSS rather than an initial AWS licensee.

Third, to the extent that a new clearinghouse will resolve MSS-AWS reimbursement claims as well as claims among AWS licensees, TMI/TerreStar believe that the Commission should delegate the task of selecting a clearinghouse jointly to the International Bureau, which grants authorizations for MSS facilities, and the Wireless Bureau, which licenses AWS

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<sup>15</sup> The *Fifth Notice* at ¶50 seeks comment on whether MSS entrants entitled to reimbursement under Rule 101.82 should submit their reimbursement claim to an AWS clearinghouse, “including any procedures we may adopt for filing such claims.”(emphasis added) Further, at paragraphs 46 and 47 of the *Fifth Notice*, the FCC proposes to adopt procedures based on Part 24 of the Rules for filing reimbursement claims and explains that these procedures would require new AWS entrants to file a prior coordination notice with a clearinghouse providing detailed geographic and operating parameters. Using this data, the clearinghouse would then determine whether the AWS entrant has benefited from the relocation of a given FS link using the Proximity Threshold Test stated in Section 24.247 of the Rules.

operators. Joint oversight of clearinghouses operations by both Bureaus is desirable given their combined expertise with mobile satellite, ATC and AWS industry issues. To ensure that the clearinghouse functions in a neutral and transparent fashion, the FCC should require it to publish all of its policy and day-to-day procedures on the Internet, subject to appropriate security provisions. MSS operators should also be granted the same oversight and/or participation right in the clearinghouse as AWS licensees.

Finally, any new clearinghouse-based reimbursement option should be available to MSS operators for as long as it is needed; it should not sunset until at least January 1, 2015. Given that some FS microwave links in the 2180-2200 MHz MSS downlink band will have co-primary status until December 2013, and that the need to relocate many FS links may not become known until MSS begin operating across the full MSS downlink band, some FS facilities might not be relocated until well after TMI/TerreStar begin service in 2008. In these circumstances and in view of the fact that the identity of AWS licensees in some paired FS bands may not be known until after 2008 too, we believe it would be prudent to make it clear that MSS-AWS clearinghouse arrangements will be available at least until December 31, 2014.

### **III. Conclusion**

For all of the reasons stated here, the FCC should authorize parties holding MSS and MSS-ATC authority to obtain reimbursement from AWS licensees for the cost of relocating FS links under the same basic clearinghouse rules and procedures applicable to AWS licensees seeking like reimbursements. Given the multiple services involved, oversight of the clearinghouse should be delegated jointly to the International and Wireless Bureaus, and MSS and AWS licensees should have an equal ability to participate in clearinghouse activities. Further, to ensure that MSS

parties are equitably treated, the Part 24 rules on which the FCC proposes to base clearinghouse operations should be modified as described above.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Gregory C. Staple, in the law firm of Vinson & Elkins, L.L.P., do hereby certify that I have on this 23rd day of November, 2005, caused to be mailed by first class mail, postage prepaid, copies of the foregoing “**Comments of TMI and TerreStar**” to the following:

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