

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 101 of the Commission's)	WT Docket No. 07-54
Rules to Modify Antenna Requirements for)	RM-11043
the 10.7-11.7 GHz Band)	
)	

REPLY COMMENTS OF EUTELSAT AMERICA CORP.

Eutelsat America Corp. ("Eutelsat"), through its undersigned counsel and in accordance with Section 1.415 of the Federal Communications Commission's (the "Commission's") Rules, respectfully submits these Reply Comments in response to the *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned matter.¹ As explained herein, Eutelsat is opposed to the changes in Part 101 of the Commission's Rules that would permit the deployment of smaller fixed service ("FS") antennas in the 10.7-11.7 GHz band (the "11 GHz band") (the "NPRM Proposal"). If the Commission adopts such a proposal, however, Eutelsat urges that the Commission do so only if it also adopts the proposed modifications to Section 101.103 of the Commission's Rules that would provide protections for fixed satellite service ("FSS") users of the band equivalent to those they hold under current Section 101.115(b), which effectively requires fixed service ("FS") operators in the band to utilize larger transmitting antennas than those contemplated in the NPRM Proposal.

¹ In the Matter of the Amendment of Part 101 of the Commission's Rules to Modify Antenna Requirements for the 10.7-11.7 GHz Band, Notice of Proposed Rulemaking, WT Docket No. 07-54, Adopted March 22, 2007 ("NPRM").

Eutelsat also strongly opposes the proposal put forth by Intelsat to segment the 11 GHz band between FS and FSS uses.² The current portion of the spectrum that is designated as a planned band internationally is an important asset for the satellite industry and it is in the United States' competitive interests to continue to preserve it.

Background

Eutelsat is a wholly owned subsidiary of Eutelsat SA, an international satellite operator. Eutelsat SA owns and operates a fleet of fixed-service satellites, some of which operate in the planned portion of the Ku-Band which is the subject of this proceeding. Eutelsat provides satellite services to customers in the United States, as well as in other North American countries and the Caribbean, utilizing transponder capacity on its parent organization's satellite system.

The 11 GHz band is currently allocated within the United States on a co-primary basis to the FS, licensed under Part 101 of the Rules, and to the FSS, licensed under Part 25.³ As the Commission explained in the *NPRM*, the 10.7-10.95 GHz and 11.2-11.45 GHz portions of the spectrum are designated as a "planned band" under Appendix 30B of the International Telecommunications Union ("ITU") rules.⁴ This means that, for this segment of the band, each country is allotted specified geostationary orbital positions. The United States, for example, has been allotted the 45°W, 58°W, 101°W and 159°W orbital positions by the ITU. These ITU assignments, therefore, constitute a valuable asset of the United States that should not be lightly compromised away by the Commission without a compelling public policy interest to the contrary.

² See Comments of Intelstat, Ltd. (May 25, 2007) ("Intelstat Comments"), at 5-7 .

³ *NPRM*, ¶ 2.

⁴ See *id.*, fn 4.

Satellite operators like Eutelsat rely on this asset in the 11 GHz band as a vehicle for providing commercial services in the United States.⁵ Moreover, with the Commission's adoption of its *DISCO II* procedures for authorizing non-U.S. satellite system operators whose sponsoring countries are members of the World Trade Organization to provide service in the United States,⁶ the potential importance of the planned band for competitive services will grow as other portions of satellite spectrum become saturated. Eutelsat is specifically developing plans, for example, for the provision of services using the planned band frequencies at an orbital location assigned to another country but capable of providing coverage in the United States.

The current structure of the Commission's Rules seeks to preserve a balance between potentially competing FS and FSS operators, by restricting the size of antennas that the former must employ in the frequency range,⁷ and limiting the latter category of operators to "international" service applications.⁸ Eutelsat is concerned that the proposed *NPRM*, if approved, would upset that carefully structured balance, and adversely impact the ability of planned band satellite operators to deploy competitive systems in the U.S. market.

⁵ U.S. operator Mobile Satellite Ventures currently employs the band for feeder links. *See* Comments of Mobile Satellite Ventures Subsidiary LLC, at 1-2.

⁶ Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States, 12 FCC Rcd 24094 (1997).

⁷ Section 101.115(b) of the Commission's Rules, 47 CFR § 101.115(b).

⁸ 47 C.F.R. § 2.106, note NG104.

Discussion

1. The NPRM Proposal

Eutelsat shares the concern expressed by the Satellite Industry Association in its comments on Fibertower's original petition for rulemaking that the proposed rule change in the NPRM Proposal implicates significant aggregate interference and pointing error issues that have not been adequately addressed by the proponents of the proposed rules change.⁹ Most of the commenters in this proceeding recognize that the use of 0.61 meter antennas by FS licensees in the 11 GHz band will increase the risk of interference, but simply conclude that these interference issues could be resolved without offering any supporting data,¹⁰ notwithstanding that the Commission invited specific comment on the subject in the *NPRM*.¹¹

Instead, commenting parties that support the NPRM Proposal rely primarily on the fact that the proposed rule change would be accompanied by an amendment of Section 101.103 of the Rules that would require FS operators in the band making use of smaller antennas to reduce predicted interference levels resulting from use of such antennas to levels no higher than FS or FSS applicants would experience from antennas of 1.22 meters in diameter or greater, as the Rules currently call for.¹² Eutelsat remains concerned that the much larger anticipated number of smaller FS antennas that will operate in the 11 GHz band under the NPRM Proposal will inevitably increase the likelihood of interference into other users of the band, including FSS operators,

⁹ See Intelsat Comments, at 5.

¹⁰ See, e.g., Comments of Alcatel-Lucent, at 4-5; Comments of Conterra Ultra Broadband, LLC, at 10-11; Comments of Fibertower Corporation.

¹¹ *NPRM*, ¶¶ 22-25.

¹² See *id.*, ¶¶ 9-10.

notwithstanding that the smaller antenna users will take measures that will theoretically reduce that interference potential to the same level as would be experienced from antennas meeting current rule requirements.

Anticipating that the Commission views the proposal to modify Section 101.103 as adequate protection for FSS and other FS operators in the band, however, Eutelsat concurs that the Commission should adopt such proposed amendment as part of an approved rule change of Section 101.115(b), but suggests that the Commission should keep this docket open for a reasonable period to enable it to monitor whether this companion rule change proves effective, in practice. If not, the Commission should reserve the possibility of reinstating some limitation on the number or density of FS operators using the smaller antennas. The burden from the use of small antennas should remain solely on small antenna users. Existing or future FSS operators in the 11 GHz band should be protected and treated in a non-adverse manner to ensure their continued use of and development of the band.

2. The Intelsat Proposed Solution

While concluding that Fibertower, as the proponent of the NPRM Proposal, has failed to provide hard, engineering evidence in response to the Commission's expressed concerns regarding the aggregate interference levels and pointing difficulties that increased numbers of smaller transmitting FS antennas would cause,¹³ Intelsat proceeds to propose in its Comment a radically different solution for avoiding interference between FS and FSS operators, one that even the Commission has not contemplated. To obviate any prospect for interference between these co-primary users of the 11 GHz band, Intelsat

¹³ Intelsat Comments, at 5.

proposes that the band be segmented into two 500 MHz components, with the “planned”, Appendix 30B portion of the spectrum (10.7-10.95 and 11.2-11.45 GHz) allocated exclusively to FS operators and the remaining “unplanned” portion of the band restricted solely to use by FSS operators.¹⁴

Eutelsat strongly opposes this sweeping alternative approach, which has been offered with no study of its commercial implications. Not only would adoption of the proposal effectively vitiate any future use of the United States’ international “planned” band asset, but it would preempt the ability of international operators, like Eutelsat SA, from offering competitive services in the U.S. market in this band which they have developed in other regions. Band segmentation will not provide an easy solution to the interference issue, but would instead completely devalue the 10.7 –10.95 GHz and 11.2-11.45 GHz portion of the spectrum for satellite services and, as a result, directly hurt satellite competition within the United States. To protect this important asset for the satellite industry, as well as for the United States, the Commission should not remove the planned band from the scope of the co-primary allocation but continue to preserve it for satellite users and allow it to remain governed pursuant to the ITU rules and implementing Commission regulations.

Intelsat’s proposal signifies a major change to the table of allocations that could have serious consequences to the satellite industry, both domestically and internationally. As such, this proceeding is not the proper forum in which to determine such a major proposal, particularly when no information has been put forth to assist the Commission in its decision making. The Commission should not consider Intelsat’s proposal to segment

¹⁴ *Id.*, at 5-7.

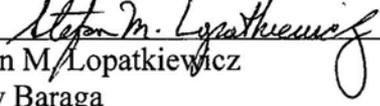
the 11 GHz band but, if it does choose to consider such a proposal, it should open a separate proceeding to address only band segmentation and collect real data in order to make a fully informed decision.

Conclusion

Eutelsat is opposed to the NPRM Proposal but, if the Commission chooses to adopt it, Eutelsat believes the only acceptable condition for doing so is by also adopting the proposed amendment in the NPRM of Section 101.103 of the Rules. In this manner, existing and planned FSS users of the band will, at least theoretically, be held harmless by the rule change. Eutelsat also urges the Commission under any circumstances to reject Intelsat's proposal to segment the 11 GHz band, and instead continue to protect the "planned" Ku-band as a valuable asset to satellite service providers and to the development of competition the satellite industry in the United States.

Respectfully submitted,

EUTELSAT AMERICA CORP.

By: 
Stefan M. Lopatkiewicz
Karly Baraga
DORSEY & WHITNEY, LLP
Suite 1250
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
(202)442-3553
Its counsel

June 21, 2007