

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

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In the Matter of)
)
Utilities Telecom Council and Winchester) RM-11429
Cator, LLC)
)
Petition for Rulemaking to Establish Rules)
Governing Critical Infrastructure Industry)
Fixed Service Operations in the 14.0-14.5)
GHz Band)

OPPOSITION TO UTC-WINCHESTER APPLICATION FOR REVIEW

The Satellite Industry Association (“SIA”) opposes Utilities Telecom Council’s and Winchester Cator, LLC’s (“UTC-Winchester” or “Petitioners”) Application for Review¹ of the Commission’s recent Order denying their Petition for Rulemaking.² SIA urges the Commission to deny Petitioners’ Application for Review because (1) the Commission acted well within its broad discretion in rejecting the UTC-Winchester Petition, and (2) the Commission was correct in finding that Petitioners had failed to propose a plan to mitigate unacceptable interference to current and future primary licensees in the Ku band, where UTC-Winchester proposes to operate.

I. Introduction

SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, and ground equipment suppliers. Since its creation more than eighteen years ago, SIA has advocated on

¹ *Utilities Telecom Council and Winchester Cator, LLC Petition for Rulemaking to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band*, RM-11429, Application for Review, filed June 14, 2013 (“*Application for Review*”).

² *Utilities Telecom Council and Winchester Cator, LLC Petition for Rulemaking to Establish Rules Governing Critical Infrastructure Industry Fixed Service Operations in the 14.0-14.5 GHz Band*, RM-11429, Order, DA 13-1093 (rel. May 15, 2013) (“*Order*”).

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behalf of the unified U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.³ SIA members operate extensive fixed satellite service (“FSS”) in the Ku band, including over 600,000 blanket-licensed very small aperture terminals (“VSATs”), earth stations on vessels (“ESVs”), as well as over 1500 individually licensed earth stations, all of which operate in the 14.0-14.5 GHz band on a primary basis.

II. Discussion

The Commission appropriately rejected UTC-Winchester’s Proposal to provide critical infrastructure industry⁴ (“CII”) service in the 14.0-14.5 GHz band because the Petitioners failed to demonstrate that they had a viable proposal and, in particular, did not put forth an adequate plan to mitigate harmful interference to FSS operators. In light of these failings, Petitioners’ effort to claim that their Petition was given insufficient consideration and should be considered contemporaneously with another rulemaking proposal is deeply flawed and unavailing.

A. The Bureaus Correctly Acted Within Their Broad Discretion in Rejecting the UTC-Winchester Petition.

As a threshold matter, the premise of the UTC-Winchester Application for Review is fundamentally flawed. Petitioners argue that because another Petition for Rulemaking, filed by

³ SIA Executive Members include: Artel, LLC; The Boeing Company; The DIRECTV Group; EchoStar Satellite Services LLC; Harris CapRock Communications; Hughes Network Systems, LLC; Intelsat S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; LightSquared; Lockheed Martin Corporation.; Northrop Grumman Corporation; Rockwell Collins Government Systems; SES Americom, Inc.; and SSL. SIA Associate Members include: AIS Engineering, Inc.; Astrium Services Government, Inc.; ATK Inc.; Cisco; Cobham SATCOM Land Systems; Comtech EF Data Corp.; DRS Technologies, Inc.; Encompass Government Solutions; Eutelsat, Inc.; Globecom Systems, Inc.; Inmarsat, Inc.; ITT Exelis; Marshall Communications Corporation.; MTN Government Services; NewSat America, Inc.; O3b Networks; Orbital Sciences Corporation; Panasonic Avionics Corporation; Spacecom, Ltd.; Row 44, Inc.; Spacenet Inc.; TeleCommunication Systems, Inc.; Telesat Canada; The SI Organization, Inc.; TrustComm, Inc.; Ultisat, Inc.; ViaSat, Inc., and XTAR, LLC. For more information, visit www.sia.org.

⁴ See 47 C.F.R. § 90.7 (defining ‘critical infrastructure industry’ as “[s]tate, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.”).

Qualcomm Inc., related to the same 14.0-14.5 GHz spectrum was considered during the same time period and acted upon favorably, they are victims of “disparate treatment,” and entitled to consideration as part of the same proceeding that the Commission initiated in response to the Qualcomm Petition.⁵ This argument does not withstand scrutiny.

While SIA strongly believes that neither the UTC-Winchester Petition nor the Qualcomm Petition merited further consideration, the fact that the former was denied, while the latter was granted, provides the Petitioners no support for reinstatement of their Petition. The Commission’s Rules establish that the Commission is entitled to consider rulemaking petitions on a case-by-case basis, and without engaging in any comparative consideration with contemporaneously-filed petitions relating to the same spectrum. Indeed, under the Commission’s rules, an unsuccessful petitioner need only “be notified of the Commission’s action with the grounds therefor.”⁶ The *Order* more than satisfies this requirement, providing multiple meritorious grounds for the Petition’s rejection.

To the extent that Petitioners seek to challenge those grounds, it bears noting that the Commission has very broad discretion in making the decision whether to initiate a rulemaking. The courts have indicated that “an agency’s refusal to initiate a rulemaking is evaluated with a deference so broad as to make the process akin to non-reviewability.”⁷ Accordingly, given the fundamentally sound technical justifications relied upon by the Bureaus for rejecting the UTC-

⁵ See Application for Review at 8 et seq.

⁶ 47 C.F.R. § 1.407.

⁷ *Cellnet Communications, Inc. v. FCC*, 965 F.2d 1106, 1111-12 (D.C. Cir. 1992), citing *American Horse Protection Ass’n, Inc. v. Lyng*, 812 F.2d 1, 4-5 (D.C. Cir. 1987); *WWHT, Inc. v. FCC*, 656 F.2d 807, 818 (D.C. Cir. 1981) (“It is only in the rarest and most compelling circumstances that this court has acted to overturn an agency judgment not to institute rulemaking.”). See also *EMR Network v. FCC*, 391 F.3d 269, 273 (D.C. Cir. 2004) (“As applied to refusals to initiate rulemakings, [the standard of review] is ‘at the high end of the range of deference.’”).

Winchester proposal, as detailed below, there is no basis for revisiting the decision to deny the Petition.

B. The Bureaus Correctly Found That Petitioners Failed to Submit a Technical Proposal Sufficient to Support Initiation of a Rule Making Proceeding.

The *Order* is soundly premised on Petitioners' failure to advance an acceptable technical proposal. In particular, Petitioners' claimed interference allowance of 6% of total noise to FSS systems, as previously noted,⁸ was a figure more suited for threshold requirements for co-primary users in the band. SIA noted this disparity early on, and argued that ITU-Recommendation S.1432 set a 1% aggregate allowance for all secondary users in the band, including UTC-Winchester.⁹ Yet rather than explain how it could conform its system to this standard, UTC-Winchester instead argued that this figure was too conservative, and that the Commission had rejected its use in a proceeding in 2005.¹⁰ But in that proceeding, the Commission was adding new *primary allocations* for fixed services ("FS") and mobile services ("MS") to the 3650-3700 MHz band, while phasing FSS operations into secondary status.¹¹ Here, the opposite is being proposed: FS operating on a *secondary basis* to FSS primary incumbents—

⁸ Opposition of SIA, filed June 26, 2008, at 6, note 17 ([ITU-R S.1432 - *Apportionment of the Allowable Error Performance Degradations to Fixed-Satellite Service (FSS) Hypothetical Reference Digital Paths Arising from Time Invariant Interference for Systems Operating Below 15 GHz*] states that a "6% $\Delta T/T$ value in the ITU Radio Regulations is one of the coordination triggers for the coordination between two GSO satellite networks operating under a primary allocation.").

⁹ *Id.*

¹⁰ See UTC-Winchester Replies to Oppositions and Reply Comments, filed August 11, 2008, at 3-5 (noting the Commission's rejection of the 1% ITU-R threshold in *Wireless Operations in the 3650-3700 MHz Band; Rules for Wireless Broadband Services in the 3650-3700 MHz Band*; Report and Order and Memorandum Opinion and Order, ET Docket No. 04-151, WT Docket No. 05-96, FCC 05-56, at 25, ¶ 63 (rel. Mar. 16, 2005)).

¹¹ The Commission established primary allocations for the FS and MS in the 3750 MHz band and "grandfathered" established FSS earth stations operating on a co-primary basis. See *Amendment of the Commission's Rules (cont...) With Regard to the 3650-3700 MHz Government Transfer Band; The 4.9 GHz Band Transferred from Federal Government Use*, First Report and Order and Second Notice of Proposed Rule Making, ET Docket No. 98-237, WT Docket No. 00-32, 15 FCC Rcd 20488 (2000). However, FSS earth stations established after December 1, 2000 could only operate on a secondary basis.

in which case the agency would have to offer stronger interference protections. Thus, UTC-Winchester cannot rely in the present proceeding on the Commission's former rejection of the 1% threshold because Petitioner has proposed to operate on a secondary basis.

Further, as the Commission notes,¹² Petitioner only recently asserted that it could operate under the 1% threshold, but still provided no demonstration or detailed description of the methods it would employ to do so. This claim evidently was Petitioners' effort finally to address the industry's concerns, but without offering a complete and forthright assessment of its technical capabilities. Accordingly, the Commission correctly rejected Petitioners' arguments.

SIA further agrees with the Commission's conclusion that the "potentially large number of deployments that would be likely under the UTC-Winchester Petition increases the likelihood that a particular station could cause harmful interference to satellite uplinks that are operating on a primary basis in the band."¹³ As previously stated,¹⁴ enforcing upper limits on the amount of CII receivers authorized to operate on a secondary basis would not address how and when particular transmitters could be located and shut down in the event of harmful interference. Additionally, the Commission points out, and SIA agrees, that future growth in FSS necessarily implicates the introduction of new FSS earth stations, and that these earth stations could "result in interference to the CII fixed stations...."¹⁵ As primary incumbents, FSS operators should be free to continue

¹² *Order* at ¶ 6, note 19.

¹³ *Order* at ¶ 8. The Commission also notes that UTC-Winchester's coordination system to control this vast amount of terminals and their particular interference levels would be "even more challenging."

¹⁴ SIA Opposition at 7-8.

¹⁵ *Order* at ¶ 10.

adding new services and products to the market, and should not be burdened by any “new obligations or constraints”¹⁶ imposed by secondary users.

Additionally, the Application for Review emphasizes the potential use of the band 14.0-14.5 GHz “to support communications services for CII crews responding to emergency events”.¹⁷ In such a situation, however, transportable VSATs would almost certainly be heavily deployed in the same geographic area in which Petitioner’s proposed CII services would be operating, because VSATs are commonly used by a variety of first responders. The Commission rightly concluded that the public interest is not served by allowing CII uses on a secondary basis in frequencies where the risk of interference to FSS earth stations is significant.

III. Conclusion

Petitioner’s proposal to add CII service to the 14.0-14.5 GHz band would be detrimental to incumbent and future FSS licensees and their customers. The Commission correctly rejected Petitioner’s eleventh hour attempt to claim compliance with the applicable aggregate interference threshold criteria, and its inevitably complicated coordination scheme. Accordingly, the Commission should deny Petitioner’s Application for Review.

Respectfully Submitted,



Patricia Cooper
President,
Satellite Industry Association
1200 18th St NW, Suite 1001
Washington, DC 20036

Dated: July 1, 2013

¹⁶ Order at ¶ 10.

¹⁷ See Application for Review at 3, 12, 14, 15.

CERTIFICATE OF SERVICE

I, Sam Black, Director of Policy of the Satellite Industry Association, hereby state that true copies of the foregoing "Comments of the Satellite Industry Association" were sent this 2nd day of July 2013, by first class mail, postage prepaid to the attached service list.

/s/
Sam Black

SERVICE LIST

Acting Chairwoman Mignon Clyburn
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Julius P. Knapp, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ruth Milkman, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mindel De La Torre, Chief
International Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Brett Kilbourne
Vice President and Deputy General Counsel
Utilities Telecom Council
1129 20th Street, NW
Suite 350
Washington, DC 20036

Henry Goldberg
Jonathan L. Wiener
Devendra T. Kumar
Thomas S. Tycz
Counsel for Winchester Cator, LLC
Goldberg, Godles, Wiener & Wright LLP
1229 19th St., N.W.
Washington, DC 20036
For Winchester Cator, LLC

Bruce A. Olcott
*Counsel for Global VSAT Forum and
European Satellite Operators Association*
Squire, Sanders & Dempsey, L.L.P.
1201 Pennsylvania Ave., Ste. 500
Washington, DC 20004

Robert W. Ames, Jr., President/CEO
Satellite Users Interference Group
P.O. Box 512548
Punta Gorda, FL 33951

Kenneth G. Ryan, President
National Spectrum Management Association
P.O. Box 528
Englewood, NJ 07631

Stephen D. Baruch
Counsel for Hughes Network Systems, LLC
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809

David S. Keir
Counsel for Row 44, Inc.
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809

Stephen D. Baruch
Philip A. Bonomo
Counsel for SeaMobile, Inc.
Lerman Senter PLLC
2000 K Street, NW, Suite 600
Washington, DC 20006-1809

Karis A. Hastings
*Counsel for SES Americom, Inc. and New
Skies Satellite, Inc.*
SatCom Law LLC
1317 F St NW, Suite 400
Washington, DC 20004

Nancy J. Eskenazi
Vice President & Assoc. General Counsel
SES Americom, Inc.
Four Research Way
Princeton, NJ 08540

Richard DalBello
Vice President, Government Relations
Intelsat Corporation
3400 International Drive, NW
Washington, DC 20008

Christine M. Gill
Jeffrey L. Sheldon
Counsel for Southern Company Services, Inc.
McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, D.C. 20005-3096

John P. Janka
Elizabeth R. Park
Jarrett S. Taubman
Counsel for ViaSat, Inc.
Latham and Watkins LLP
555 Eleventh St., N.W., Suite 1000
Washington, D.C. 20004

Bruce A. Olcott
Joshua T. Guyan
Counsel for The Boeing Company
Squire, Sanders & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Audrey L. Allison
Director, Frequency Management Services
The Boeing Company
1200 Wilson Boulevard
Arlington, VA 22209

Joseph M. Sandri, Jr.
Angela C. Parsons
Jessica L. DeSimone
Counsel for Fibertower Corporation
1667 K Street, N.W., Suite 250
Washington, DC 20006

Jennifer D. Hindin
Carl R. Frank
Counsel for ARINC Incorporated
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006

Dean R. Brenner
Vice President, Government Affairs
QUALCOMM Incorporated
2001 Pennsylvania Ave., N.W. Suite 650
Washington, D.C. 20006

Alonso A. Picazo Diaz
Executive Director of Regulatory and
Legal Branch
SATMEX
Rodolfo Gaona 86, Lomas de Sotelo
Mexico City 11020

Linda Kinney
Bradley Gillen
1233 20th Street, N.W.
Suite 302
Washington, DC 20036

Donald M. Jansky
Consultant to Hispasat, S.A.
Jansky/Barmat Telecommunications, Inc.
1120 19th Street, N.W., Suite 333
Washington, DC 20036

Ruben Levcovitz
11710 Old Georgetown Road, Apt. 1508
Rockville, MD 20852

Abbas Yazdani
Founder/CEO
ARTEL, Inc.
1893 Preston White Drive
Reston, VA 20191

Mitchell Lazarus
*Counsel to the Fixed Wireless
Communications Coalition*
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Arlington, VA 22209