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FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Proposals for Blanket Licensing of) RM-9005
 Satellite Earth Stations Operating)
 in the 17.7-20.2 Ghz and 27.5-30.0)
 Ghz Frequency Bands and Sharing)
 Between Fixed Terrestrial and)
 Satellite Services in the 17.7-19.7)
 Ghz Frequency Bands)

To: The Commission

**COMMENTS OF INDEPENDENT CABLE AND
TELECOMMUNICATIONS ASSOCIATION**

The Independent Cable & Telecommunications Association ("ICTA") submits these comments in response to the public notice released on September 5, 1997 concerning the above-referenced matter (the "Notice").

ICTA is a trade and service association comprised largely of private cable and telephony operators, property owners and managers, and vendors of cable and telephone equipment. Private cable and telephony operators primarily serve multiple dwelling units ("MDUs"), including apartments, condominiums, cooperatives, planned unit developments, college campuses, hotels/motels and prisons.

Most private cable operators offer approximately 70 channels of video programming and many of these operators also provide telephony to their subscribers. Private cable operators currently serve approximately two million subscribers nationwide. This number, however, pales

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in comparison to the more than sixty two million subscribers currently served by franchised cable operators in the United States.^{1/} In fact, approximately eighty nine percent of multichannel video programming subscribers in this country subscribe to the franchised cable operators' service,^{2/} notwithstanding, among other things, many private cable operator's provision, at a lower cost, of a programming package similar to that offered by franchised operators.

Given franchised cable operators' continued dominance of the video services market, it is imperative that private operators do not confront unnecessary impediments that prevent them from effectively competing. One such potential obstacle, which the Commission should be careful not to create, relates to the issues raised in the Notice regarding 17.7- 19.7 Ghz ("18 Ghz band"). The Petitioners referenced in the Notice (including Lockheed Martin Corporation, AT&T Corp., Hughes Communications, Inc., Loral Space Communications, Ltd. and GE American Communications, Inc.) and Teledesic Corporation (collectively, "Petitioners") seek to utilize all or part of the 18 Ghz band in a manner that will detrimentally affect private cable operators.

Private cable operators usually provide video programming services to a single building or small number of buildings in relatively close proximity to each other. These operators historically have operated without the need to obtain a municipal franchise and most of these operators do not wish to seek to obtain a franchise, which often would force them to serve the entire municipality when they either do not have the resources to do so or it is inconsistent with

^{1/} In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, ("Third Annual Report") CS Docket No. 96-133, FCC 96-496, ¶ 14 (rel. Jan. 2, 1997).

^{2/} Third Annual Report, ¶ 4.

their business plan. For this and many other reasons, it is important for private operators to be able to operate in a manner that does not trigger the need for a franchise. With limited exceptions, a franchise is required if an operator's system's closed transmission paths (i.e. wires) cross public streets or rights of way.

In light of the foregoing, approximately ten years ago private operators sought approval from the Commission to transfer their video signal from one building to a nearby building that was separated by a public street or right of way using microwave, and in particular, the 18 Ghz band. Private operators demonstrated that they needed additional spectrum to compete with franchised operators, and that the 18 GHz band was more suitable than other available spectrum to satisfy the needs of private operators.^{3/} In a Report and Order that was released in 1991, the Commission agreed, and permitted private operators to use the 18 Ghz band to distribute video programming without the need to obtain a municipal franchise (the "18 Ghz Decision").^{4/} The Commission found that allowing private operators to use the 18 Ghz band would foster badly-needed competition in the video services market and would serve the public interest.^{5/}

ICTA strongly believes that permitting the Petitioners to utilize the 18 Ghz band in the manner requested would (i) seriously undermine the benefits to competition and the public provided by the 18 Ghz Decision; and (ii) significantly injure private cable operators.

^{3/} See In re Matter of Part 94 of the Commissions's Rules to Permit Private Video Distribution Systems of Video Entertainment Access to the 18 Ghz Band, PR Docket No. 90-5, FCC 91-55, 6 FCC Rcd 1270 (rel. Feb. 28, 1991).

^{4/} Id.

^{5/} Id.

Petitioners' utilization of the 18 Ghz band in the manner requested could cause interference with private cable operators' signals, thereby detrimentally affecting their operations. Moreover, at the very least, private operators would be forced to purchase new and more expensive equipment if the Commission permits Petitioners to utilize the 18 Ghz band in the manner requested. Given the need of most private cable operators to minimize costs in order to effectively compete, and the public's need for increased competition in the video services market,^{6/} the Commission should deny the Petitioners' requests as they relate to the 18 Ghz band. Therefore, if the Commission believes that it is necessary to initiate a rulemaking with respect to Petitioners' requested use of the 18 Ghz band, ICTA will strongly oppose such a request in the proceeding.^{7/}

^{6/} The negative effects from franchised cable operators' dominance of the video services market can be seen from, among other things, the claims raised by the Consumer Union and Consumer Federation of America in a petition filed with the Commission on September 23, 1997. These groups claim that cable rates have risen at an alarming rate over the past few years as well as since the enactment of the 1996 Telecommunications Act.

^{7/} ICTA only recently learned of the Petitioners' proposals as they relate to the 18 Ghz band. Therefore, ICTA's comments herein certainly should not be construed as including all of ICTA's objections to the Petitioners' proposals as they relate to the 18 Ghz band nor should they be construed as containing an exhaustive discussion of the objections raised.

Respectfully submitted,

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Dated: September 24, 1997

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply were served by hand delivery on the 24th day of September, 1997 to:

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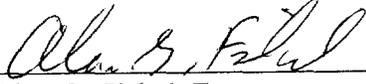
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