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April 6, 1998

VIA HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, ET Docket No. 95-183, RM-8553

Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz, PP Docket No. 93-253

Dear Ms. Salas:

On behalf of WinStar Communications, Inc. ("WinStar"), please find enclosed for filing an original and eleven copies of WinStar's Opposition to Petitions for Reconsideration filed in the above referenced proceeding.

Should you have any questions regarding this filing, please contact the undersigned.

Sincerely,

Philip L Verveer

Philip L. Verveer

Enclosures

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of	)	
	)	
Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands	)	ET Docket No. 95-183 RM-8553
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz	)	PP Docket No. 93-253

CONSOLIDATED OPPOSITION AND COMMENTS OF WINSTAR COMMUNICATIONS, INC.

WinStar Communications, Inc. ("WinStar"), by its attorneys, hereby files this Consolidated Opposition and Comments to various reconsideration petitions in the above-captioned proceeding.[1]

I. TRW PROVIDES NO BASIS FOR SEEKING TO RESERVE THE 39.5-40.0 GHz BAND FOR SATELLITE INTERESTS.

In the 39 GHz Order, the Commission rejected satellite operators' demands that the 39.5-40.0 GHz band be reserved for satellite operations.[2] According to the Commission, such reservation would ill serve the public interest because of the substantial use of the band by terrestrial licensees and because

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1 See Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Proposed Rulemaking*, 12 FCC Rcd 18600 (1997) ("39 GHz Order").

2 See id. at ¶¶ 6-11.

fixed terrestrial services "will not be able to share the same spectrum blocks" with satellite operators.[3] TRW, however, seeks to revisit those conclusions, arguing that sharing is feasible, that terrestrial services must be "restrict[ed] . . . to those frequencies below 39.5 GHz,"[4] and that the Commission should limit "elevation angles of terrestrial transmitting equipment."[5]

TRW is simply incorrect in contending that sharing is feasible between the two services. WinStar has pointed out in numerous pleadings and engineering analyses that 39 GHz licensees' fixed terrestrial services would be "frozen out" of large areas around proposed satellite earth stations because of interference concerns.[6] WinStar also has submitted documents showing that terrestrial services would no longer be viable in the 38.6-40.0 GHz band if forced to operate under the severe power density ("EIRP"), automatic transmission power control ("ATPC") sought by satellite operators.[7] Indeed, the Commission noted that numerous other terrestrial licensees had supported WinStar's "conclusion[s]" and that "various satellite entities" including Hughes, Motorola, Lockheed Martin, and TRW had

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3 Id. at ¶ 8.

4 TRW Petition at 2.

5 Id. at 10.

6 See Attachment to Petition to Deny of WinStar Communications, File Nos. 157-SAT-P/LA-96(72) & 29-SAT-AMEND-97 (filed Aug. 21, 1997); Attachment to Opposition of WinStar Communications, RM No. 8811 (June 20, 1996).

7 See WinStar *ex parte* letter to Chairman Reed Hundt (Dec. 16, 1996).

indirectly conceded "that sharing between terrestrial and satellite is not likely in bands above 36 GHz."[8] TRW's reconsideration petition contains no engineering data contradicting the Commission's conclusions. Nor did any other satellite operator challenge the Commission's correct finding that sharing is infeasible.[9]

TRW's argument concerning elevation angles fails to account for the existence of over 80 licensees (most possessing multiple grants) in the 39 GHz band. In fact, fixed services in this band are licensed heavily, deployed on a national scale, and growing rapidly. Many of these fixed wireless systems are for "last mile" communications, *i.e.*, facilities-based wireless local loop systems supporting local exchange, long distance, broadband access, and Internet traffic. Such systems are deployed at whatever elevation angle is necessary to achieve line of sight between transceivers. A restriction on FS elevation angles would effectively shut down many existing and future deployments, thereby hindering significantly 39 GHz licensees' ability to provide local loop services.

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8 See 39 GHz Order at ¶ 8.

9 Since sharing is not feasible, reconsideration is unwarranted for TRW's claim that the Commission's channelization plan (50 MHz blocks) and BTA licensing scheme "largely preclude[]" satellite operations because satellite operators require "broader spectrum bands and service areas that are national, regional or global." See TRW Petition at 6.

II. O'KEEFE'S ASSERTIONS CONCERNING SPECIFIC WINSTAR AUTHORIZATIONS ARE OUTSIDE THE SCOPE OF THIS PROCEEDING.

The Commission should not address arguments by petitioner James W. O'Keefe ("O'Keefe") that the agency inappropriately dismissed several of his pending 39 GHz applications by granting "mutually exclusive applications of WinStar."[10] The Commission has held that a "rulemaking process of general applicability is not the appropriate procedure to adjudicate a specific matter involving a particular party."[11] Because O'Keefe's petition addresses specific authorizations granted to WinStar, this proceeding is not the proper forum to address O'Keefe's concerns. That is especially true as O'Keefe's petition in this proceeding is simply a rehash of the arguments raised in his more recently filed Petition for Reconsideration of the Commission's grant of various WinStar 39 GHz applications.[12] Accordingly, O'Keefe's concerns are more properly addressed in the ongoing reconsideration proceeding pertaining to the grant of WinStar's applications.[13]

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10 See O'Keefe Petition at 8.

11 Implementation of Section 302 of the Telecommunications Act of 1996; Open Video Systems, 12 FCC Rcd 6258, at ¶ 13 (1997) (The Commission will not consider specific complaints against a particular party in a rule making proceeding of general applicability).

12 See O'Keefe, Petition for Reconsideration, File No. 9404165 et. seq. (filed Mar. 12, 1998).

13 Should the Commission feel compelled to resolve these issues in this proceeding, however, WinStar incorporates by reference the arguments made in its Opposition to O'Keefe's Petition for Reconsideration. See Opposition of WinStar Wireless Fiber Corp., Mar. 25, 1998. As shown in the

III. THE COMMISSION SHOULD NOT ADOPT COMSEARCH'S REQUEST TO MODIFY ITS TECHNICAL FREQUENCY COORDINATION PROCEDURES.

Comsearch requests that the Commission reconsider and/or clarify its rules adopted in the 39 GHz Order regarding certain frequency coordination procedures[14] Specifically, Comsearch maintains that the Commission should not specify a coordination distance for 39 GHz licensees, but rather should allow the 39 GHz industry to determine the proper frequency coordination distance.[15] In the absence of industry accepted criteria, Comsearch states that the agency should specify a default distance of 50 kilometers to ensure 39 GHz licensees sufficient flexibility to accommodate changes in technology.[16] Comsearch also requests that the Commission make clear that coordination is required among all co-channel and adjacent channel systems within coordination distance, including rectangular service areas and grandfathered links.[17]

WinStar does not support Comsearch's request. The technical frequency coordination procedures adopted in the 39 GHz Order are intended to be interim measures pending final action on the National Spectrum Management Association's ("NMSA")

Opposition, O'Keefe's applications were not timely filed under the Commission's cut-off rules and may not be considered mutually exclusive with WinStar's applications. Hence, O'Keefe does not enjoy any processing rights.

14 See Comsearch Petition at 1.

15 Id. at 3.

16 Id. at 3-4.

17 Id. at 4.

recommendations.[18] Until NMSA has concluded its studies and 39 GHz licensees have garnered more experience with interference issues relating to large scale point-to-multipoint system deployment, it would be counterproductive to adopt permanent interference measures.[19]

IV. ART'S PROPOSAL FOR A FIVE DAY RESPONSE TIME FOR COORDINATION REQUESTS SHOULD BE ADOPTED.

WinStar supports Advanced Radio Telecom Corporation's ("ART") request that the 39 GHz Order be modified to require recipients of coordination notifications to respond within five business days rather than ten.[20] A shorter response time is necessary to facilitate rapid service installation schedules.[21]

V. THE COMMISSION SHOULD ADOPT THE JOINT PETITIONERS' REQUEST FOR MODIFICATION OF RULE 101.147(u)(2).

Several petitioners, filing jointly ("Joint Petitioners"), point out that the Commission's rules do not reflect its stated intention of protecting incumbent service area operations from new operations authorized through the competitive bidding process.[22] The 39 GHz Order held that "[w]here an incumbent

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18 See 39 GHz Order at ¶ 68.

19 See WinStar Petition at 8 n.23.

20 See ART Petition at 5.

21 See 39 GHz Order at ¶ 69 (stating that a shorter response time is appropriate for some services).

22 See Joint Petition at 22. The Joint Petitioners are AA&T Wireless Services, Cambridge Partners, Inc, Linda Chester, HiCap Networks, Inc., Paul R. Likins, PIW Development Corporation, SMC Associates, Southfield Communications LLC, and Wireless Telco.

licensee's rectangular service area occupies only a portion of a BTA, the licensee's channels will be available for application under the new competitive bidding rules, but the incumbent will retain the exclusive right to use those channels within its rectangular service area."[23] By contrast, Rule 101.47(u)(2) provides protection only for "grandfathered links."[24] Thus, it must be brought into conformity with the language of the 39 GHz Order.[25]

VI. WINSTAR SUPPORTS CLARIFICATION OF THE NEWLY ADOPTED 39 GHz RENEWAL RULES.

In their Petitions, ART and Columbia Millimeter Communications, L.P. ("CMC") note several discrepancies in the Commission's new renewal rules for 39 GHz licensees.[26] Unlike other Part 101 services, the rules for 39 GHz licensees require such licensees to satisfy their construction requirements 18 months -- as opposed to 30 to 60 days -- prior to the end of their license term.[27] As a licensee of other spectrum bands under Part 101 and the winner of 15 LMDS licenses at the recent

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23 39 GHz Order at ¶ 79 (emphasis added); see also id. at ¶ 82 (In rejecting repacking proposals, the Commission stated that "[a]s noted throughout this proceeding, we do not intend to alter or restrict significantly the operations of incumbents.").

24 47 C.F.R. 101.147(u)(2).

25 See Joint Petition at 22-23.

26 See ART Petition at 4; CMC Petition at 4.

27 See ART Petition at 4; CMC Petition at 4; see also 47 C.F.R. § 101.15(c).

LMDS auction,[28] WinStar believes that 39 GHz licensees should be treated like other area-licensed millimeter band Part 101 services with respect to the timing of renewal filings.[29] Similarly, WinStar agrees with Biztel, Inc. that Section 101.63(a) of the Commission's rules should be corrected to reflect the new construction/renewal policy for 39 GHz licensees.[30]

VII. THE COMMISSION SHOULD ADOPT A TEN YEAR LICENSE TERM FOR ALL 39 GHz LICENSEES.

WinStar agrees with the Joint Petitioners' assertion that all 39 GHz licensees, including those authorized prior to August 1, 1996, should be granted a ten year license term.[31]

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28 LMDS licenses, like 39 GHz licenses, are situated in the millimeter microwave bands and are awarded on an area-wide basis. LMDS renewal applications are due 30 to 60 days prior to license expiration. See 47 C.F.R. § 101.15(c).

29 See Chadmoore Communications, Inc. v. FCC, 113 F.3d 235, 242 (D.C. Cir. 1997) ("We have long held that an agency must provide an adequate explanation before it treats similarly situated parties differently.").

30 See Biztel Petition at 10-11. The Commission should amend Section 101.63(a) in the same manner as this rule was modified for LMDS licensees: "Each station, except in the 38.6-40.0 GHz Fixed Microwave Services and Local Multipoint Distribution Services, authorized under this part must be in operation within 18 months from the initial date of grant."

31 See Joint Petition at 22; see also 47 C.F.R. § 101.67.

VIII. CONCLUSION.

WinStar respectfully urges the Commission to take the actions outlined herein.

Respectfully submitted,

WINSTAR COMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I, Sophie J. Keefer, do hereby certify that on this 6th day of April, 1998, copies of the foregoing "Winstar's Opposition to Petitions for Reconsideration" were mailed, first-class postage prepaid, unless otherwise indicated, to the following parties:

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