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October 15, 1998

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Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

RE: Ex Parte Presentation in FCC-IB Docket No. 98-172 -- NPRM Proposing Redesignation of 18 GHz Band

Dear Madam Salas:

On Wednesday, October 14, 1998, the undersigned was joined by Mr. Michael Katzenstein, General Counsel of OpTel, Inc., and Mr. Jonathan Blake of Covington and Burling and met with numerous representatives of the FCC to discuss the referenced NPRM.

The first meeting was with Mr. Charles Magnuson, Ms. Diane Garfield and Mr. Rudy Baca of the International Bureau who were joined by Ms. Eloise Gore and Mr. John Wong of the Cable Services Bureau. In the second meeting, the undersigned and his colleagues met with Ms. Anita Walgren and Mr. Dan O'Connors in Commissioner Ness's office. In the third meeting the undersigned and his colleagues met with Mr. David Wye, Ms. Mary Shultz, Mr. Bob James, Ms. D'wana Terry, Mr. Bob Calaff, Mr. Herb Zeiler and Mr. Ron Netro, all from the Wireless Telecommunications Bureau.

In each of these meetings the ICTA representatives described the role of the trade association, the number and mode of operation of Private Cable Operators (PCOs), PCO use of 18 GHz microwave transmissions and the importance of the referenced NPRM to the PCO industry. In addition, the ICTA group discussed with the FCC participants studies and analyses underpinning the NPRM and the engineering predicate for the

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conclusions of the NPRM, the grandfathering provision included in the NPRM and its very negative impact on future as well as existing microwave use by PCOs and FCC data regarding the number of PCOs and the scope of microwave use by these PCOs.

In addition to the above, the following describes the interpretation by ICTA of the NPRM and its views regarding the impact of the NPRM on the PCO industry:

The NPRM

The FCC recently released a Notice of Proposed Rulemaking (NPRM) seeking comments on a proposal to make terrestrial microwave systems, including those utilized by private cable operators for video, secondary to satellite downlinks in 250 MHz of spectrum between 18.3 GHz and 18.55 GHz. In the NPRM the Commission indicated it intends to accommodate all existing users in the band. However, it appears that factual misconceptions reflected in the NPRM have led the Commission to propose a band segmentation plan that would potentially preempt private cable use of more than half of its currently utilized spectrum. The NPRM would make geostationary orbit, fixed satellite service (GSO/FSS) primary in the 18.3-18.55 GHz band and would permit blanket licensing in favor of that service. Private cable today enjoys the band between 18.142 - 18.580 GHz. Although existing stations and stations that had been applied for as of September 18, 1998 will retain co-primary status in the 18.3 - 18.55 GHz band, application for stations filed after that date will not be afforded grandfathered status under the proposed plan and blanket licensing by GSO/FSS would make it all but impossible to ensure future spectrum availability in that band.

The Commission's View

As best we can tell, the International Bureau, which authored the NPRM, regards all spectrum between 17.7 and 19.78 GHz as interchangeable and equally suited to all terrestrial services (NPRM ¶8,27). Consistent with that view, the NPRM fails to refer to the current 440 MHz (18.142-18.580 GHz) limit on spectrum available to private fixed wireless operators for video delivery. There simply is no other authority for video transmission in any other portion of that spectrum range. In footnote 48 the NPRM incorrectly states that SMATV operators offer less program than franchise operators and therefore only need 440 MHz of contiguous spectrum.

As a result, the Commission proposes to "accommodate" the spectrum needs of the terrestrial services by adopting a band segmentation plan that includes a primary allocation for GSO/FSS services at 18.3 - 18.5 GHz. NPRM ¶29. Further, as noted

above, the Commission has proposed blanket satellite earth station licensing in this band, which will make the 18.3 - 18.55 GHz band virtually unusable for secondary terrestrial fixed services.

Although this plan, if adopted, would severely limit private cable use of the current 18 GHz private cable band, it does not appear that this was the Commission's intent, or that the Commission understands that this is so. To the contrary, the Commission notes that the "proposed plan attempts to balance the needs of satellite services and terrestrial fixed services," and asserts that the "proposed plan can accommodate the needs of terrestrial fixed services." NPRM ¶31.

Sincerely,

William J. Burhop

William J. Burhop
Executive Director